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BOUNDARY BETWEEN THE UNITED STATES AND GREAT
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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The information required by a resolution of the House of Representatives of the 28th May last, in relation to the Boundary between the United States and Great Britain.

JULY 3, 1838.

Read, and laid upon the table.

To the House of Representatives of the United States :

I herewith transmit to the House of Representatives a report from the Secretary of State, together with the documents therein referred to, in answer to their resolution of 28th May last.

M. VAN BUREN.

WASHINGTON, July 2, 1838.

DEPARTMENT OF STATE,

Washington, July 2, 1838.

The Secretary of State, to whom has been referred the resolution of the House of Representatives of the 28th of May last, requesting the President of the United States, "if in his judgment not incompatible with the public interest, to communicate to that House the proceedings of the commissioners appointed under the seventh article of the treaty of Ghent, to fix and determine the boundary between the United States and the possessions of Great Britain in North America, from the foot of Neebish rapids, as fixed under the sixth article of said treaty, to the northwesternmost point of the Lake of the Woods; and also to communicate to the House the correspondence, if any, which the two Governments may have had in relation to the disagreeing reports of said commissioners; and any other information in possession of the Executive on the same subject," has the honor to lay before the President copies of the separate reports of the two commissioners referred to, to both Governments, stating, in detail, the points on which they have differed, and the grounds upon which their respective opinions have been formed; being all the information on the subject on the files of the Department.

Respectfully submitted.

JOHN FORSYTH.

To the PRESIDENT of the United States.

Separate report of the American Commissioner under the seventh article of the treaty of Ghent, December 24, 1827.

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REPORT OF THE AMERICAN COMMISSIONER.

BLACK ROCK, STATE OF NEW YORK,

December 12, 1827.

The joint commissioners of the United States of America, and of his Britannic Majesty, appointed under the sixth and seventh articles of the treaty of Ghent to ascertain and fix a certain portion of the boundary line between the dominions of the two contracting parties lying in North America, and to decide upon the property of the several islands situated in the lakes, rivers, and water communications, through which the said boundary passes, in conformity with the true intent of the treaty of 1783—having differed in regard to certain portions of the boundary embraced by the 7th article of the said treaty of Ghent; and having also disagreed as to the appropriation of a certain island lying in the water communication between lakes Huron and Superior, the undersigned commissioner on the part of the United States now proceeds, in compliance with one of the requisitions of the last-mentioned treaty, in case of such disagreement, to detail, in a separate report, the points in difference between him and his colleague, and the grounds of the opinions which he entertains in regard to the subject-matter of such difference.

That portion of boundary and territory which by the 6th and 7th articles of the treaty of Ghent was submitted to the adjudication of the undersigned and his colleague, is described in the treaty of 1783, (and which description is, by the treaty of Ghent, made the guide and rule of their proceedings,) in the following words:

"Thence, (referring to the point where the 45th parallel of north latitude, in its progress westward, first strikes the river St. Lawrence, formerly called the Iroquois or Cataraguy,) along the middle of said river, into lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence, along the middle of said communication into lake Erie; through the middle of said lake, until it arrives at the water communication between that lake and lake Huron; thence, along the middle of said water communication, into the lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior; thence, through lake Superior, northward of the isles Royale and Philipeaux, to the Long lake; thence, through the middle of said Long lake, and the water communication between it and the Lake of the Woods, to the Lake of the Woods; thence, through the said lake, to the most northwestern point thereof."

By the 6th article of the treaty of Ghent, all that part of the above boundary which extends from St. Regis, (the point where the 45th parallel of north latitude first strikes the St. Lawrence,) to the water communication between lakes Huron and Superior, was submitted to two commissioners, who were directed to ascertain and fix the said boundary in conformity with the true intent of the treaty of 1783, and to decide to which of the contracting parties the several islands lying within the rivers, lakes, and water communications, along said boundary, respectively, belong; which service being accomplished, the same commissioners are directed, by the 7th article of said treaty of Ghent, to perform the same duties in relation to the remaining part of said boundary. Although that part of the above line, the establishment of which is made the special object of the 6th article of the treaty of Ghent, has already been

amicably and definitively settled by the award of the two commissioners, the undersigned has nevertheless thought proper to allude to it, as he will hereafter have frequent occasion to do in this report, because, in the course of their proceedings under that article, principles were established, decisions made, and facts established, which will be important to the elucidation of the points now in difference. Under a mutual conviction that such reference would be proper, as well as convenient, a resolution was adopted by the two commissioners, which appears on their journal, under date of October 27th, 1827, by which it is declared, "that each party, in making his separate report, shall be at liberty to avail himself, either for fact or argument, of the decisions, journals, and documents made, kept, and filed under the 6th article of the treaty." No inconvenience will result from this course to the umpire to whom the subject may be referred, as the journals kept under the 6th and 7th articles are contained in the same book; and various documents on file, relating to the two commissions, accompany, and are in some measure blended with, each other.

The two points in difference between the commissioners are—

1st. As to the course which the boundary line should pursue in passing the island called "St. George's," or "Sugar island," situated in the water communication between lakes Huron and Superior, and involving also the property of said island: the American commissioner being of opinion that the boundary should be drawn along the channel which divides the island from the British or eastern shore, and thus place it within the territories of the United States; and the British commissioner contending, on the other hand, that the line should pass through the American or western channel, and the island be appropriated to his Britannic Majesty.

2d. The second point of difference regards the course of the boundary from lake Superior to the Chaudiere falls, in Lac La Pluie, situated between lake Superior and the Lake of the Woods: the American commissioner being of opinion that the boundary ought to pass from lake Superior, into the bay or estuary at the mouth of the river Kamanistiquia, and proceed up that river, keeping the most continuous chain of water communication to the Chaudiere falls; which line is minutely described on the journal of the commission, under date of 23d of October, 1826, to which, and to the maps accompanying this report, reference is made: and the British commissioner being of opinion, that from lake Superior the boundary should enter the mouth of the river St. Louis, and thence proceed up that river, and by the most continuous water communication, to the said Chaudiere falls: for the route of which reference is again made to the journal and maps aforesaid.

As preliminary to a more specific examination of the first point in difference, it may be well to take some general views of the duties imposed on the commissioners by the treaty, and of the principles which have governed the American commissioner, at least, if not his colleague, in the discharge of those duties; and to connect therewith so much of the history of the commission under the 6th article as may be necessary to the purposes of explanation.

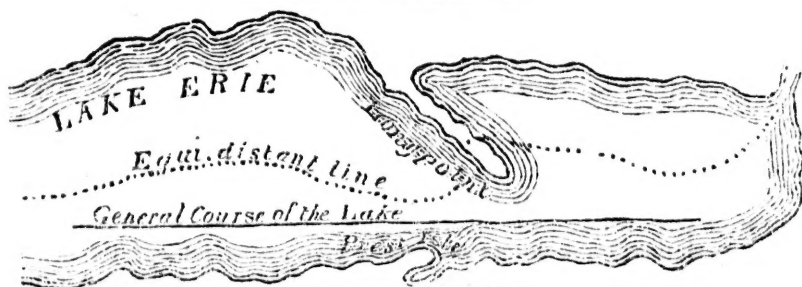
By the treaty of 1783, the boundary from St. Regis (the point where the 45th parallel of latitude first strikes the St. Lawrence) to lake Superior, is simply and uniformly described as passing "through" or "along the middle," of the several rivers, lakes, and water communications which separate the countries. Although any line which would have the

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effect to divide this sheet or volume of water into two equal quantities, whether superficial or cubic, would be equally a "middle" line, yet the first and most ready interpretation of the phraseology here used by the parties, would seem to point to a line run longitudinally through this water communication, in such a direction as to be always midway or equidistant from the two opposite shores. Were this chain of water communication straight and of uniform size, or its shores but moderately curved and irregular, and, at the same time, were it free from islands, this equidistant line might conveniently be, and probably would have been, adopted as the boundary. But a moment's inspection of the maps accompanying this report will exhibit such irregularities in the size, shape, and direction of this body of water, as to render the application of this principle inconvenient and ridiculous, if not utterly impracticable. This water communication, although composed of one continuous sheet, assumes in its progress an endless diversity of shapes and courses—sometimes expanding into lakes and bays, several hundred miles in breadth, and at others contracted and contorted into a narrow and crooked river or strait, pursuing by turns every point of the compass, and presenting numerous cases where, from the peculiar conformation of the opposite shores, an equidistant line seems to be wholly impracticable. One of these cases (and it often occurs) is where the curvature or indentation of a shore is so deep and sudden as to form (when represented by straight lines) an angle of less than ninety degrees; another, where the river divides into two channels, which part, and take opposite directions; or where one or both of these channels take a direction retrograde from the general course of the river; or where there is but one channel, and the opposite sides assume all these varying and contradictory courses. An insuperable practical objection to this line arises from the difficulty, if not impossibility, of determining, in cases like those above mentioned, what are opposite points, and, of course, where must be the middle of a river. If the general course of a lake, water communication, or river, (in other words, a straight line drawn from one end of it to the other,) be assumed as the basis of operation, and those are to be called opposite points of the shores which are touched by any line drawn at right angles with this *general* course, a boundary or middle line will be produced, that will be constantly invading and cutting off portions of the main shore itself. Such an absurdity may be produced even in a broad and (as regards its general course) straight lake, as is shown in the following diagram.

UPPER CANADA.



UNITED STATES.

If, on the other hand, the opposite points are to be regulated with reference to the particular course of an ever-varying river, at any given place, the difficulty lies in determining what that precise course is, in any of the complicated cases above mentioned.

But if this equidistant line had been found to be practicable, there were other and insurmountable objections to its adoption as a boundary.

The maps will show that this great water communication is filled with a vast number of islands, which it is made the duty of the commissioners under the treaty of Ghent to apportion and appropriate to the respective Governments. The effect of adopting this equidistant middle line would have been to divide most of the large and valuable islands, and many of the smaller ones, into two unequal parts, and to give one part to each Government. The line itself, conforming, as it must do, to the various dissimilar windings of the two opposite and extreme shores, would have exhibited a perpetual succession of curves, angles, and zigzag courses, and often returning and doubling upon itself. The labor of calculating and tracing such a line would have been immense, and the difficulty of preserving it still greater, and could have been effected only by the erection of a continual wall of stone, or other imperishable material; inasmuch as the establishment of monuments at particular points, however near to each other, would furnish no sufficient data for ascertaining the course of the intermediate and complicated line. The effect, moreover, of such a course would have been to place the citizens and subjects of the two nations in juxtaposition, occupying possessions divided from each other only by imaginary, or at best uncertain lines. And the further and necessary consequences of this state of things would be, perpetual collisions between the two parties in respect to boundary and jurisdiction; constant collusions to evade the revenue laws of the two countries; and combinations to shield delinquents from the arm both of civil and criminal justice.

There are, however, other middle lines, resolvable on strictly scientific principles, that might have been adopted as the boundary, and which, therefore, deserve a passing notice.

The treaty of 1783, in its progressive description of the boundary, separates it into distinct sections, each comprehending an entire river, lake, or water communication, and requires that the boundary shall pass through the middle of each. Any connected line, therefore, drawn through this whole water communication, in such a manner as to divide each of the specified sections into two equal superficial quantities, will, strictly and geometrically speaking, be a "middle" line. Such, however, is the irregularity in the shape of each of these sections, that a straight line drawn from the required point of entrance into it, to the required point of departure from it, will, in no instance, divide it into equal parts; and it must therefore be done by a crooked line. But there are no acknowledged principles by which to determine what shall be the direction of this crooked line, and there may be a million of crooked lines drawn through the area formed of each section of this water communication, all differing from each other, and yet each having the effect to divide it into two equal quantities, and therefore being each a "middle" line. Either of the two commissioners might have drawn a middle line of this description, in such a manner as to give nine-tenths of the whole islands to his own Government. But it will not be contended that either

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of their lines, or any other traced upon the same principle, is the middle line intended by the treaty of 1783.

The preceding speculations on the subject of a middle line are probably unimportant as regards the purposes of this report; but they will, it is trusted, be pardoned, in consideration of the fact, that there are many respectable individuals of both nations who affect to believe that this boundary should have been run and established on strictly scientific principles. There is yet another rule or principle for determining what is the middle of a river or water communication, not dependent, however, on scientific calculation, but adopted as a convenient practical and technical interpretation by writers on international law. By this principle, the middle of a river is determined to be, along the thread of the channel or *flum aquæ*, without reference to the relative distance from the opposite shores, or the quantity of water on either side. The reason and spirit of this rule are particularly applicable to a great portion of the boundary under the 6th and 7th articles of the treaty of Ghent; and it has been very uniformly observed, in fact if not in form, by my colleague and myself, in tracing those parts of the line to which it is thus applicable. But it loses its value and application in cases (which often occur) where the river or water communication divides itself into two, or perhaps ten channels, not essentially variant either in size or depth, and each having its *flum aquæ*.

After examining the various theories on the subject of a "middle" line, the commissioners became convinced that the mutual interests of the two parties would be most advantageously consulted, and the intentions of the treaty of 1783 better satisfied, by following the plain and practical suggestions of common sense, in tracing out such a boundary as would be best calculated to secure to each party the largest possible participation in the benefits of the great navigable thoroughfare through which it passes; such a boundary as would divide the islands equally in point of value, and conveniently in regard to location; such a boundary as could be easily run and preserved, and readily recognised, and as would place the citizens and subjects of the two Governments in such situations relatively to each other as would be least likely to create misunderstandings and feuds. And, under such views of the subject, they agreed, at once, in the propriety of uniformly adopting a water line for a boundary, so as to apportion out the insular territory by entire islands, and not by fractional parts. Even the sticklers for rigid construction will hardly deny that we have, by this last determination, given quite as literal an interpretation to that part of the treaty which requires us to run the line "through the middle of a river or water communication," as we should have done by tracing it across islands, at the distance, perhaps, of half a dozen miles from any water.

Having mutually recognised the principle that the boundary should invariably be a water line from St. Regis to lake Superior, there were other considerations involved in the discharge of our official duties, which seemed to demand an early attention, and to present equally proper subjects for the establishment of some general rules or principles; and one of the most important of these regarded the subject of navigation.

The vast chain of water communication extending from the Atlantic for two thousand miles, into the interior of North America, and so large a proportion of which forms the natural boundary between the two par-

ties, is navigable for ships in its whole extent, with the exception of two or three short interruptions, which will probably soon be removed by the construction of artificial canals. To this water communication, and the free use of its navigation, the immense territorial possessions lying on each side of it, and belonging to the respective parties, are indebted for more than half of their value. It became, therefore, the obvious duty of the two commissioners to inquire in what manner, if at all, and to what extent, their operations might affect the rights of the respective parties to this navigation. If the effect of establishing the boundary would be to limit and restrict the rights of navigation, as well as those of territory, it would seem to be incumbent on the commissioners to give such a direction to the line as would secure, as far as practicable, a continuous navigation to each party.

The first time that this question of navigation was agitated between the undersigned and his *present* colleague, was at the meeting of the board in New York, late in the autumn of 1821, after our surveys and maps under the 6th article of the treaty had been completed, but before any decisions had been made in regard to the course of the boundary. It was known to us that some difference of opinion existed even among able jurists, as to the precise relations which ought in particular cases to obtain between territorial rights and the rights of navigation, and how far the one should control or modify the other; and, although it may be said that the question of navigation was not by the treaty submitted to the adjudication of the commissioners, yet so intimate were its connexions with, and so important its bearing upon, the great interests which *were* thus submitted, that it could not be disregarded.

At that meeting a proposition was submitted to and entertained by the board, the import of which was, that the two commissioners, in making their final award and description of the boundary agreed on by them, should accompany it by, or rather incorporate into it, a joint declaration that they had assumed as one of the bases of their operations the principle that the navigation of all the lakes, rivers, and water communications through which, by the treaty of 1783, the boundary is to pass, should continue, as before, open and free to the citizens and subjects of the two Powers, unaffected by the course of the territorial or boundary line to be established by their award; it being, however, understood that the proposition should be first submitted to, and receive the assent of, their respective Governments.

It is obvious that, had we been successful in the adoption of this principle, it would have greatly facilitated our labors, and enabled us to make a more satisfactory distribution of the insular territory, by removing the embarrassment which the question of navigation was constantly interposing. It was, moreover, believed that a distinct declaration in regard to the reciprocal rights of navigation, sanctioned by the two parties, would be highly useful and important in the prevention of future collisions and misunderstandings.

The proposition was accordingly submitted by the commissioners to the ministers of their respective Governments, then at the city of Washington; and, although it was readily acceded to by the President of the United States, the undersigned was given by his colleague to understand that the British minister had declined, on the part of his Government, to give it his sanction. The question of navigation having been

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thus unexpectedly thrown back upon the commissioners, it was thought expedient to trace the boundary in such a manner as would (other proper considerations not being disregarded) be best calculated to meet any possible result to which the future discussions between the two Governments on the subject of navigation might lead.

It was in this stage of the business that the undersigned, satisfied that the adoption of some general rules or principles to be observed in fixing the boundary would tend both to facilitate and give a character of consistency to their operations, drew up, and informally proposed to his colleague, the adoption of the following rules:

1st. That the boundary from St. Regis to lake Superior should invariably be a water line.

2d. That where there was one, and but one, navigable channel, *that* channel should be pursued, without reference to its size or its contiguity to one or the other shore.

3d. That where there were two navigable channels, the line should be carried through the one having the greatest quantity of water.

And, with a view to an equal division of territory,

4th. That where there were three or more channels, the line should pass along the one nearest to the centre, provided a good navigation should be thereby left to each party.

5th. That where there was no navigation, the line should be run with reference only to a fair division and proper location of territory.

To the first of these rules the British commissioner gave, as he had previously done, his unqualified assent. But as to the other four, although he did not object to their general spirit, he declined giving them a distinct and positive recognition, on the ground that cases might occur, in the course of our proceedings, where, from peculiar interests and localities, a departure from abstract principles, however valuable in themselves, might be desirable even to both parties, and where the restrictions imposed by these rules might therefore prove inconvenient: and the two commissioners thereupon proceeded to trace out and fix the whole line of boundary from St. Regis to the water communication between lakes Huron and Superior, without the aid of any pre-established rules or principles, excepting that which required that islands should not be divided. As a qualification, however, of this last assertion, it ought perhaps to be stated, that, preparatory to fixing the line through the rivers St. Lawrence and Niagara, we directed our two principal surveyors to trace on the maps of these two rivers, with as much accuracy as was conveniently and readily attainable by the eye and the dividers, an equidistant line from the two opposite shores, and to make a summary estimate of the quantity and value of insular territory which such a line would give to the respective parties. The object of this instruction evidently was, to form some rule or datum for the subsequent division of the islands. But it is doubtful whether it had any influence on that distribution; and so little importance was attached to this course of proceeding, that it was never afterwards resorted to.

Notwithstanding the many difficulties we had to encounter, we were successful in establishing the entire line of boundary, under the sixth article of the treaty, as the same is minutely described in our final award; a copy of which will be found on our journal, under date of June 18, 1822.

The undersigned flatters himself that the line fixed by that award will

be found, on examination, to have been traced out in strict conformity with the before-mentioned rules; with the exception, perhaps, of some trifling deviations, by which, in our desire to obtain the object contemplated in the fifth rule, (and which is a satisfactory division of territory,) we may have partially invaded the letter, but not the spirit, of some of the preceding rules. At any rate, the undersigned has no hesitation in avowing that the general principles assumed and incorporated in those rules are those which he adopted for his own government in the execution of the sixth article of the treaty; which he has attempted to enforce in his discussions with his colleague under the seventh article; and by the application of which, he hopes to be able to sustain the opinions he has advanced in relation to St. George's island, and the course of the boundary in passing it, in regard to which the two commissioners have unfortunately disagreed.

It can hardly be deemed necessary to go into a labored discussion of the abstract merits of these rules. As to the *first*, which requires that islands should not be divided, there is no difference of opinion between the undersigned and his colleague; and if there were, enough, it is believed, has been already said to show the theoretic absurdity as well as the practical mischiefs of adopting a scientific line which would sever almost every important island into two parts, and thus divide it between the parties; and as to the other *four*, they severally and distinctly show, on the face of them, their principles and objects.

With these preliminary remarks, the undersigned now begs leave to call the attention of the two Governments more specifically to the first point in difference between the commissioners, and which regards St. George's island.

By recurring to the maps and documents accompanying this report, and more particularly to the map marked A, and Mr. Bird's sketch D, (which, for convenient reference, has been reduced to a smaller scale,) the following facts will be established:

1st. That isle St. George lies in St. Mary's river, or the water communication between lakes Huron and Superior; is about fourteen miles in length, and three in average breadth; and contains forty and a half square miles, or twenty-five thousand nine hundred and twenty acres. (See the map, together with Mr. Bird's certificate, marked D, and Mr. Ferguson's estimate, marked B.)

2d. That the section of water communication (or area embraced by the two opposite shores) within which this island lies, is, with the exception of a few yards at its lower end, where St. George's and St. Tammany's islands interlock, divided into two parts or channels only; one of which passes to the eastern or British side, and the other to the western or American side of the island. (See the map.)

3d. That by far the largest volume of water, both as regards depth and superficial extent, is to be found on the British side of the island. (See the map A, and the estimates and certificates of Mr. Ferguson and Mr. Bird, and Mr. Ferguson's affidavit C.)

4th. That the best and only ship navigation is through the British channel, which affords a good and safe navigation for vessels of the largest class usually employed on the lakes; while the American channel is practicable for canoes and batteaux only, and is called the *canoe channel*. (See the affidavit of Mr. Ferguson.)

5th. That in the river Superior, is containing sixteen acres; sand one h 40.5 square acres: that and sixteen missionaries St. Tamma has, by the seventh art that the isl remains to with the bo contents of

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5th. That much the largest portion of the whole insular territory lying in the river, strait, or water communication between lakes Huron and Superior, is comprised in three large islands, namely: isle St. Joseph, containing 141.9 square miles, or ninety thousand eight hundred and sixteen acres; isle St. Tammany, containing 15.8 square miles, or ten thousand one hundred and sixty-four acres; and isle St. George, containing 40.5 square miles, or twenty-five thousand nine hundred and twenty acres: that isle St. Joseph, containing ninety thousand eight hundred and sixteen acres, has already been allotted to Great Britain by the commissioners while acting under the sixth article of the treaty; that isle St. Tammany, containing ten thousand one hundred and sixty-four acres, has, by the adjudication of the same commissioners, acting under the seventh article of the treaty, been assigned to the United States; and that the isle St. George alone (which is the subject of disagreement) yet remains to be appropriated. (See all the maps of the straits of St. Mary's, with the boundary traced on them, and Mr. Ferguson's estimate of the contents of the island.)

The undersigned now begs leave to apply the rules and principles, which he has before stated to have been assumed by him as guides to his decisions, to the facts above detailed, and as they are fully supported by the documents to which he has referred.

The first rule requires that the boundary should be a water line, and not pass across islands. This principle having been mutually conceded, the only question as applicable to St. George's island is, whether the line shall take the British or the American channel.

The second rule or principle, which demands that where there is one, and but one, navigable channel, that channel shall invariably be pursued without reference to its size or its contiguity to either shore, is exactly applicable to the present case, where there is but one navigable channel; and that, too, (which corroborates the case,) through the main or largest branch of the river. By the unvaried application of this rule to every part of the boundary where the line has been established, and where navigation was supposed to exist, each nation has been secured in the enjoyment of an uninterrupted sloop navigation, without transgressing its territorial limits; and it is not a little extraordinary that the British commissioner, after receiving a distinct intimation from his Government of its unwillingness to recognise any right of navigation that was not protected by territorial limits, should, even for a moment, have entertained the idea of running the boundary in such a manner as entirely to cut off and destroy the American navigation, when he might, even upon the principles of his own Government, have secured it to both parties by adopting what is obviously the largest and plainest channel of the river.

It is a notorious fact, that there is an uninterrupted and most valuable chain of ship navigation from Niagara river to the American fort situated on St. Mary's river, several miles above isle St. George, and comprehending a distance of more than seven hundred miles; and that American vessels, the largest of which exceed three hundred tons in burden, have been constantly plying during the last season between Niagara river and the said fort on St. Mary's, and passing through St. George's channel, on the British side of the island—the American channel being impracticable for vessels even of twenty tons burden.

The third rule provides for cases where there are two navigable

channels, and directs that the boundary shall pass through the one having the greatest quantity of water. Although not a case exactly parallel, yet the principle of this rule applies with its full force to St. George's channel; for if it be proper to adopt the larger of two channels when both are navigable, *a fortiori* will it be right to do so when the larger is, and the smaller is not, navigable.

The fourth rule is adapted to a case differing still more from the one in question; yet its principle, which recognises the propriety of securing a right of navigation to each party, is in strict harmony with the two preceding rules, and distinctly points to St. George's channel as the proper boundary.

The fifth and last rule looks exclusively to a fair division of the insular territory, so far as that object can be attained without encroaching upon the rights of navigation as secured by the preceding rules; and there is not a question but that the object of this rule will be better fulfilled by appropriating St. George's island to the United States rather than to Great Britain.

By recurring again to the maps and to Mr. Ferguson's estimates and certificate, it will be seen that there are a number of small islands scattered along the river St. Mary's, which have little or no territorial extent or value, and which have been divided between the parties with reference to their local positions, and probably in about equal proportions; and that the only considerable islands, either in value or extent, lying in that river, are—isle St. Joseph, containing 90,816 acres, already appropriated to Great Britain; isle St. Tammany, containing 10,164 acres, allotted to the United States; and isle St. George, containing 25,920 acres, which yet remains to be disposed of; and that, therefore, the only approach that can be made toward an equal division of territory in the said river, by the disposition of the last-mentioned island, will be by giving it to the United States; whereas, by giving it to Great Britain, the disparity in insular territory, already too great, would be still more increased. If, instead of confining this comparative estimate of insular territory to the river St. Mary's, it be extended to the whole water communication from the St. Lawrence to lake Superior, inclusive, it will be found that, after giving isle St. George to the United States, the aggregate of insular territory appropriated to Great Britain, through this whole range of boundary, will exceed that appropriated to the United States.

Such are the principles, and such the facts, upon which the undersigned has founded his opinion that the boundary, in passing St. George's island, ought to follow the British or eastern channel; and, without intending the least disrespect to the opinions of his colleague, he can unhesitatingly declare that there is no portion of the extensive boundary referred to the two commissioners by the treaty of Ghent, the course of which is, in his opinion, more distinctly and unequivocally [determined] by the united and concurring influence of every consideration which fairly and legitimately appertains to the subject, than at the place now in question.

In the course of the labors of the commissioners, they have encountered and decided numerous points of real doubt and difficulty. In many places they have found the water communication embarrassed and distracted by complications of islands dividing it into various channels; and, where the interests of navigation would point to one channel as the most proper boundary, the claims of a "middle line" indicate another; and

the propriety in the present case is the same.

It now but far as he has league in the island, showing

His only entry on the island in the lying between the main shore of George's island.

What are the two capable of in any written views on those used, however, in the island, Mr. which he has not only obtained from the river Barnhart's are used in American.

In reference to the undersigned's similitude to the one in

The river eight or ten to the head of the boundary to the center give to him (thirds) of the passes is a navigable impossible this part of George's through the

Between the river, the point of moved from British ships

the propriety of an equal division of territory demands still a third; but in the present case these various interests concur in requiring one and the same channel.

It now becomes the duty of the undersigned to notice and answer, as far as he has been enabled to understand them, the arguments of his colleague in support of *his* opinion, that the boundary, in passing St. George's island, should be conducted through the American channel.

His only knowledge of the grounds of that opinion is derived from an entry on our journal under date of October 25, 1826; wherein he stated that "he considered that the application of the same principles which, under the 6th article of the treaty of Ghent, appropriated Barnhart's island in the St. Lawrence, and the islands at the head of lake St. Clair, lying between the boundary line as there settled and the American main shore, to the United States, would, in this instance, require St. George's island to be allotted to Great Britain."

What are the particular "principles" which governed our decisions in the two cases to which he has alluded, and which are so peculiarly applicable to the case in controversy, is left to conjecture; as he has never, in any written or oral communication with his colleague, expressed his views on this question in terms more explicit or more explanatory than those used in the entry above quoted. In a written communication, however, on this subject, from his Britannic Majesty's minister at Washington, Mr. Vaughan, to the American Secretary of State, (with a copy of which he has had the honor to be furnished,) the American commissioner is not only charged, in more than equivocal language, with having departed from the rules or principles which governed his decision in the case of Barnhart's island, but other arguments (which will hereafter be noticed) are used in support of the British claim to St. George's island, and the American channel as the boundary.

In reference to the case of "the islands at the head of lake St. Clair," the undersigned cannot, on turning to the maps, discover the remotest similitude or analogy between the respective localities of that place and the one in difference.

The river St. Clair discharges into lake St. Clair by not less than eight or ten different mouths or channels; and thus forms "the islands at the head of lake St. Clair," referred to by the British commissioner. The boundary line is there drawn through the navigable channel nearest to the centre of this group of islands; but still in such a manner as to give to his Britannic Majesty much the larger quantity (probably two-thirds) of the insular territory. The channel through which the line passes is as large, as deep, as direct, and in every way as well fitted for the navigation of lake vessels, as either of its collateral branches. It is impossible, therefore, to conceive of any principle which the adoption of this part of the boundary recognises, that will require the cession of St. George's island to Great Britain, or the establishment of the boundary through the American channel.

Between the localities, however, of Barnhart's island, in the St. Lawrence, (the other case referred to,) and St. George's island, in St. Mary's river, there is one, and, as far as the undersigned can discover, but one, point of resemblance; and that is, that they are both considerably removed from the centre of the river: Barnhart's island lying near the British shore, and having much the largest quantity and extent of water

on the American side, and isle St. George being situated nearer the American shore, and having much the greatest depth and breadth of water on the British side. It is a fact, that the boundary was established by the two present commissioners through the smaller channel which divides Barnhart's island from the British shore; and hence it would seem to be inferred that the American commissioner is obnoxious to the charge of inconsistency and departure from principle, because he now refuses to establish it through the narrower channel which separates isle St. George from the American shore. If the British minister had taken the trouble to cast his eye on the maps along the whole range of boundary, (no such reference is necessary for the commissioner,) he would have discovered that, in ninety-nine cases out of a hundred, and probably in every case except that of Barnhart's island, the line had been run through the larger channel where there were but two, and through some middle one where there were more than two. The rule, therefore, has been (if constant and all but unvaried practice can form a rule) to run the line through the largest channel; and the case of Barnhart's island forms an *exception* to that rule. The charge of inconsistency and departure from former rules and principles may, therefore, be much better preferred and sustained against the British commissioner, for refusing, in this case, to adopt the larger channel in conformity with our former practice, than against the American commissioner, for declining to sanction an exception to that practice, and that, too, in a case where the same reasons for such exception do not exist.

Predicating their opinions on the simple circumstance that Barnhart's island was appropriated to the United States, by fixing the line through the smallest and narrowest channel of the river, and without appreciating, and probably without knowing, the motives which led to it, loud and heavy complaints have been made against the commissioners by some of his Britannic Majesty's subjects in Canada. The undersigned therefore deems it his duty, as he trusts his colleague has felt it to be *his*, to explain the grounds of that decision; not only on account of its supposed bearing on the case now in controversy, but for the purpose of removing any unfavorable impressions which may have been made, more especially on the mind of the British Government, by the unadvised complaints of its subjects.

The river St. Lawrence differs from most other parts of the water communication between the two countries. From lake Ontario to Prescott and Ogdensburg, it is broad, deep, and navigable for ships of any size; from the head of Baxter's island to the lower end of Barnhart's, a distance of about nine miles, commonly called the *Long Saut*, it is so rapid and precipitous that no ship or other vessel adapted to lake navigation has ever ventured to enter it. It is, however, navigated by small boats or batteaux, but can be ascended only by the use of tow-ropes managed from the shores; and each of the main shores is about equally fitted for this kind of navigation. Boats and rafts of timber may, moreover, descend it, but with some hazard, through the middle of the American channel—that is to say, between Baxter's island, the middle of Saut island, and Barnhart's island (commonly called the Three Saut islands,) on the one side, and the American main land on the other; but no boat or raft can descend through the middle of the British channel, without the most imminent hazard of destruction. In tracing the boundary, there-

fore, through the British channel, the restraints which are imposed on the navigation are

There is a small island in the river St. Lawrence, of about thirty miles in length. It is so situated which is a great advantage without any other advantage. The two parties are equivalent in power on those parts of the navigable water.

The island of the Saut is decidedly a British side. It is three islands, one, and but it contains about the same as the British side.

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The undersigned proposes that the British Majesty's rights of the rights of the purport of the considered in the channel island; as the British be restored of common to my colleague. British navigation of the appropriation restored by

fore, through this frightful cataract, we felt ourselves absolved from the restraints which the question of navigation had, for reasons before stated, imposed on us in regard to other parts of the line.

There is a very large and valuable island situated at the head of the river St. Lawrence, called Grand isle, or Long island, containing upwards of thirty thousand acres, and having a good navigation on both sides of it. It is so near the centre of the river as to render it difficult to ascertain which channel discharges the most water; and it might, therefore, without any violation of principle, have been appropriated to either of the two parties. But the great difficulty lay in finding a territorial equivalent for this island, without infringing on the rights of navigation on those parts of the river which were entitled to the appellation of navigable waters.

The islands of the St. Lawrence next in value to Grand isle, were the Saut islands before mentioned, the two uppermost of which lie as decidedly on the American as the lower one (Barnhart's) does on the British side of the centre of the river; but the united contents of these three islands do not exceed six thousand acres. There was, however, one, and but one, considerable island in the Niagara river, which contains about 18,000 acres, and lies somewhat nearer to the American than to the British main shore.

Grand isle, in the St. Lawrence, is situated directly abreast of, and covers, the important British town, fortress, and ship yard, of Kingston; and the British commissioner was, therefore, desirous of securing it to his own Government, on account of its local situation, and its valuable timber and wood; and the more so, as it did not offer equal advantages to the citizens of the United States. In this compound and difficult case, therefore, the commissioners eventually determined to appropriate Grand isle to Great Britain; and, as the nearest approach to an equivalent therefore, to give to the United States the three Saut islands before mentioned, and the large island in the Niagara river, and to apportion the residue of the islands of the St. Lawrence in the manner that would best accord with their respective situations.

Such is the history of the arrangement by which Barnhart's island was not unadvisedly, and, as we hope it may be thought, not unwisely appropriated to the United States.

The undersigned has been not a little surprised at the very extraordinary proposition made by his colleague, and repeated by his Britannic Majesty's minister, (founded, no doubt, on the assumed principle that the rights of territory and navigation are concurrent and exclusive,) the purport of which is, that the American Government should, for a specified consideration, grant to British subjects a common right of navigation in the channel of the river St. Lawrence to the south of Barnhart's island; as if the appropriation of that island to the United States had deprived British subjects of an important right of navigation which would be restored by the cession of that island to Great Britain, or by the grant of common right of navigation to the south of it. Now it must be known to my colleague that, if there has actually been a breach of the chain of British navigation along this portion of the St. Lawrence by the establishment of the boundary line, it has not been occasioned simply by the appropriation of Barnhart's island to the United States; nor would it be restored by the cession of that island, or by the proposed grant of a com-

mon right on the south side of it. If the possession of Barnhart's island gives to the United States the exclusive navigation between *it* and the American shore, so equally does the possession of the two upper Saut islands give an exclusive navigation between *them* and the American shore. But it is a well known fact, that a boat bound up or down the river, and entering the *Long Saut* at either end, must pursue the same channel throughout; that is to say, a boat entering the British channel at either end must continue in that channel, and pass to the *north* of all the three before-mentioned islands: and the same is the case in respect to the American channel; and both for the obvious reason that the straits which divide these islands from each other are wholly impracticable. It follows, therefore, (assuming the principle of exclusive navigation,) that the possession of any one of these three islands by the United States would as effectually interrupt the chain of British navigation as the possession of the whole; and that nothing short of a cession of the whole of the three islands, or the grant of a common right of navigation throughout their whole extent, would effect the object which they profess, and no doubt candidly, to have in view. But, whatever may have been said in respect to Barnhart's island, I believe it has never been, nor is it now, contended that the commissioners did wrong in allotting the two upper Saut islands to the American Government.

Before closing this subject of Barnhart's island, the undersigned ought, perhaps, in consideration of the very free remarks which his Britannic Majesty's minister, Mr. Vaughan, deemed himself at liberty to make in respect to his principles and motives, to state, as he now does, that in the first, and indeed in all (for there were several) of the early projects which he submitted to his colleague, for a course of boundary to be adopted through the St. Lawrence, Barnhart's island was not placed within the American lines; and that, in finally concurring in the complicated arrangement by which this island was thus placed, he was influenced rather by a belief that he was subserving a particular and favorite interest of Great Britain, and gratifying the wishes of her commissioner, than by any anticipated advantage which he supposed the retention of this particular island would confer on the United States.

The undersigned will now notice some statements and arguments contained in the communication before alluded to, on the subject of St. George's island, by his Britannic Majesty's minister at Washington, whose expositions on this question are more full than any that have been received from the British commissioner, who has probably been less reserved in the expression of his views to the representative of his own Government than to his colleague. The following extracts from this communication exhibit the principal facts and arguments relied on, in regard to the subject immediately in question.

The commissioners, at the very commencement of their operations, laid down, conjointly, certain rules to facilitate their decisions.

By one of these rules, it was agreed that the islands intersected by a middle line between the opposite banks formed by the main land on each side, were to be divided in their whole extent, as equally as possible, between the two nations; and by another rule, it was decided that, whenever the division of an island by the intersecting line was into two unequal parts, the nation to whose lot the larger portion fell might retain the whole, or exchange its portion for an equivalent.

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The British commissioner is persuaded that "the island marked No. 1 in the enclosed map" [called isle St. Tammany on the official maps of the board,] "should be appropriated to the United States. The only approximation to an equivalent for that appropriation, is by giving up the whole of the island No. 2" [called isle St. George, or Sugar island, on the official maps] "to Great Britain. The latter would have a right to the greater part of it, when a middle line is run through the water communication in which it lies, and there would be a right thereby to retain that island as a part of his Majesty's possessions.

"The commissioners of boundary, however, disagree about selecting of the three Neebish channels through which they ought to draw the line of boundary.

"It appears to me, on a reference to the enclosed map, that there cannot be any pretension to run the line through the eastern Neebish channel, lying as it does immediately contiguous to the main land under the dominion of his Majesty, when the commissioners are expressly directed by the treaty to ascertain and mark out what is the *middle* of this water communication, or of the space enclosed between the main land on either side of it.

"All these [Neebish] channels are said to be impeded by rapids; but the western and middle are fit for the navigation of boats, and the eastern is alone fit for navigation by ships."

Disclaiming all knowledge or recollection of any rules or principles that were conjointly or separately adopted by the commissioners, or either of them, other than those before mentioned, the undersigned is nevertheless willing to admit, for the purpose of argument, that the rules ascribed to us were actually, formally, and conjointly thus adopted. He is the more ready to do so, as there is nothing either in the spirit or in the practical results of these rules, as far as they go, that will differ essentially from those before detailed and explained. And he trusts he will be able clearly to show, by the application of these very rules, that the boundary ought to be established through the British or eastern channel, and St. George's island be appropriated to the United States; and that the opposite conclusions to which the British minister and himself have arrived, have been occasioned solely by the circumstance that the former has applied the rules to an imaginary case, which has probably been reported to him on ex-parte information, while the latter will apply to facts and localities as they are proven to exist by the official maps and other authenticated documents on the files of the board.

It is conceded, then, by the rules quoted and relied on by the British minister, that where an island is divided into two unequal parts, by the intersecting *middle line of the treaty*, the nation to whose lot the larger portion shall fall, may retain the whole, or exchange its portion for an equivalent.

Although his excellency has not furnished a definition, *in extenso*, of the middle line of the treaty, he has still given us some insight into his views on the subject, by his averment that "the commissioners are expressly directed by the treaty to ascertain and mark out what is the middle of this water communication, or" [adopting what he intends as synonymous phraseology] "of the space enclosed between the main land on either side of it."

He thus distinctly defines the subject to which the line is to be applied, but not the character and properties of the line itself. It is evident, from

the irregular and awkward shape of this subject in the present case, (the section of the river that embraces isle St. George,) that it is beyond the reach of mathematical skill to trace through it the strictly equidistant line before spoken of; and it is equally evident that the practical approach to such a line would give the largest part of the island to the United States.

But there is in the present case another middle line, ascertainable on strictly scientific principles, and which, when ascertained, would present a much more practical and sensible division of the area than that which would be effected by the zigzag equidistant line: and this is, a line from a point in the centre of the river immediately above where it branches, in order to pass the island, to another point in its centre, immediately below where the two branches again unite, drawn in such a manner as to divide the whole space or area into two equal quantities, by the shortest, and of course straightest, route that will produce that result. Such a line would, as appears from the calculations and statements of Mr. Bird, give to the United States 15,310 acres less of water, and of course the same number of acres more of island, than to Great Britain; and the account would stand thus:

Great Britain would have, of water,	-	27,506 acres.	
of land,	-	5,310	
			32,816
The United States would have, of water,	-	12,206	
of land,	-	20,610	
			32,816

The United States, then, being, by the operation of the middle-line principle, entitled to more than half of the island, would, by the application of the second rule relied on by Mr. Vaughan, have a right to the whole of it.

There is another argument used by the British minister, in the passage of his communication above quoted, and also urged by the British agent to the commission, which is more remarkable for its ingenuity than for its liberal or enlarged views of the subject; and which is indebted for its whole force, if it have any, to the accidental circumstance of the manner in which the commissioners happened to divide their official labors.

This argument is based on the consideration, that, as there are but two considerable islands in the river St. Mary's, remaining to be divided under the 7th article of the treaty; and as one of them (isle St. Tammany) has, as a matter of right, fallen to the United States, the other (isle St. George) ought to be appropriated to Great Britain, as being the nearest approximation that can be made towards an equal division of territory.

There is nothing either in the treaty of Paris or that of Ghent which requires an equal division of the islands. Indeed, in the treaty of 1780, the subject of the islands is not mentioned; and the treaty of Ghent merely provides that the commissioners shall decide and declare to which of the parties the islands respectively belong. But in the latter, the water communication and islands are treated in some respects as common and undivided property; and the ordinary dictates of justice, independently of any treaty requirement, would seem to suggest the propriety of an equal division of them, so far as it can be made without encroaching on other more important interests. This equitable consideration, how-

ever, does not seem to be the other one of the division of the boundary: it has been shown that the United States are proportionally double the size of these two

As a further ministerial act, which, indeed, was introduced, signed with the treaty, the boundary of the Superior. The treaties as between the communication of the Superior?

In discharge of this omission, the same interest has been continued, the same principle of communication.

But if it be that they were the further the lines of might, with immediate provision was and the bi would pro surveyors the opposi islands be then, St. J the same for his Bri in demand add, that were not St. Joseph rect gener could not time, and both be as two comm

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ever, does not require that the islands should be alternated, and every other one given to each party ; but will be equally satisfied by any fair division of the aggregate of the islands throughout the whole extent of boundary : and in this view of the subject it will appear, as has already been shown, that, after giving St. George's and St. Tammany's islands to the United States, Great Britain will still have more than her aggregate proportion of insular territory throughout the whole line ; and more than double the quantity allotted to the United States, in the very river where these two islands are situated.

As a further answer to this territorial claim set up by the British minister and agent, and by way of imparting at the same time information, which, independently of the argumentative purpose for which it is here introduced, ought to be made known to the two Governments, the undersigned would remark, that there is an evident mistake or omission in the treaty of 1783, and continued in the treaty of 1814, in regard to the boundary through the water communication between lakes Huron and Superior. In its approach to this strait, the boundary is described in both treaties as "passing through lake Huron to the water communication between that lake and lake Superior ; thence [leaping over this water communication, and treating it as a mathematical point] through lake Superior," &c.

In discharging their official duties, the two commissioners have treated this omission as a pure mistake or inadvertence, and have given the same interpretation to the treaty as they would have done had the line been continued on "THROUGH" this water communication, by the use of the same phraseology that is uniformly applied to every other water communication ; that is to say, "through its middle."

But if the commissioners were right (and it will hardly be contended that they were not) in assuming this latitude of interpretation, they had the further right to select the place, within this space or interval, where the lines of the two articles of the treaty should be divided ; and they might, with equal propriety, have fixed it at either end, as at any intermediate point in this space. Indeed, the most obvious place for this division was at the Sault Ste. Marie, where the river is single and narrow, and the bisecting line would be short and determinate ; and that point would probably have been selected, but that the season closed upon the surveyors when they were some twenty miles short of it. Had this or the opposite end of the strait been taken, the whole of the three large islands before mentioned would have fallen under the same article ; and then, St. Joseph's island having first been appropriated to Great Britain, the same argument which is now used in claiming St. George's island for his Britannic Majesty, would have applied, and with augmented force, in demanding it for the United States. The undersigned would further add, that although the surveys of St. Tammany's and St. George's islands were not completed at the time of closing the 6th article, and allotting St. Joseph's island to Great Britain, still he was possessed of very correct general information as to their locations and extent. He therefore could not for a moment permit himself to doubt but that, at the proper time, and for the numerous reasons set forth in this report, they would both be assigned to the United States by the unhesitating award of the two commissioners.

Having discharged the duty imposed by the treaty of Ghent, so far as

relates to the first point of difference, the undersigned will now proceed to the examination of the second, which regards the course of the boundary between lake Superior and the Chaudiere falls on Lac La Pluie.

It was unfortunate that, at the early period of 1783, when the treaty of Paris was concluded, the geography of the interior of North America was but faintly and imperfectly known to either of the parties; and that, in describing the whole range of boundary from St. Mary's river to the Lake of the Woods, they found it necessary to confine themselves to those points or landmarks only; and these were Isle Royale, Isles Philipeaux, and the Long lake—places probably of general and acknowledged notoriety at that day; but it now happens, still more unfortunately, that of these three landmarks, one only, namely, Isle Royale, can be so certainly and satisfactorily identified as to be mutually recognised either by the agents or the commissioners of the two Governments. The other two places, namely, Isles Philipeaux and the Long lake, are not at present known by these respective appellations; and their identity and location are therefore, to a certain extent, matter of inference and conjecture. This uncertainty, and more especially that which hangs over the latter place, has occasioned the present difference of opinion between the two commissioners.

The commissioners agree that Isle Royale is an island of lake Superior, situated near its northwestern coast as laid down and designated by that name on the maps of the commission; and, of course, they also agree that the boundary must, in conformity with the treaty, pass "to the northward" of it.

The commissioner of the United States is of opinion (but in this he has not the concurrence of his colleague) that Isles Philipeaux, the next landmark of the treaty, are a cluster, or rather a succession of small islands, (of which the one named on the map *Pâté* is the most considerable,) extending along the lake coast from northeast to southwest, and situated between Isle Royale and the main shore; and, of consequence, that the boundary must pass to the "northward" of them also.

He is further of opinion that the Long lake of the treaty is a sheet of water called by the present inhabitants and traders of the country Dog lake, lying in the interior, and forming part of the river Kamanistiquia, through which it discharges into lake Superior, a little to the northward of Isles Royale and *Pâté*.

As the treaty requires that the commissioners should pursue a water communication wherever it is practicable, the general corollary from the preceding facts and opinions will be, that the boundary, in order to conform to the description of the treaty, should pass from the head of St. Mary's river, through lake Superior, to the northward of Isles Royale and *Pâté*, to the mouth of Kamanistiquia; thence, up the middle of that river, to Dog or Long lake; thence, through the middle of that lake, &c. to the Chaudiere falls on Lac La Pluie, as the route is described at large on the journal.

The British commissioner, on the other hand, is of opinion that the boundary, after passing to the northward of Isle Royale, should return southwardly and westwardly through lake Superior, and enter the mouth of the river St. Louis, which discharges into lake Superior at its southwestern extremity, called *Fond du Lac*; proceed up that river to near

its source at large c

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The fir incongru ance whic quire no l but a poo men who from the make so g traverse t purpose th lying (as main land other han the descri line throu Kamanist water rou to the sou Philipeau treaty—" of the Ka ply with with the Grand Po are, like t

its source ; and thence to Lac La Pluie, by the route described by him at large on the journal.

It was the intention of the undersigned to have gone into a full and minute examination of the maps and other official evidence on the files of the commission, for the purpose of showing that the route by the Kamanistiquia is, and that the one by the river St. Louis is not, the true boundary of the treaty of 1783. But this task has been so ably and successfully performed by the agent of the United States, Mr. Delafield, in an argument or exposition, (which, with its accompanying documents, were presented to the board during its deliberations on this subject, and which form part of the regular exhibits to be laid before the umpire by whom the differences are ultimately to be settled,) that he has deemed it most advisable merely to append to this report a copious extract from the argument of the agent, and to refer, as he now does, to that argument and its accompanying proofs for the grounds of the opinions he has above expressed in regard to the course of this part of the boundary. He is the more readily induced to adopt this course, inasmuch as it will save (not to himself the trouble of writing and preparing the way, for that would be of minor consideration, but) to the exalted tribunal to which the subject is to be referred, the labor of travelling *twice*, and by nearly the same path, over this dreary and uninteresting ground.

As the scope, however, of the agent's observations is rather to show that the Kamanistiquia route is, and by necessary consequence that the St. Louis is not, the true boundary of the treaty, the undersigned will take the liberty to add a few remarks (and few, he trusts, will suffice) to show affirmatively that the St. Louis route could not have been the one intended by the parties to the treaty of 1783.

The first objection to this route is strikingly presented in the awkward, incongruous, and (if the expression is admissible) *unauthentic* appearance which this line of boundary would exhibit on the map. It will require no little stretch of imagination, and, at the same time, be paying but a poor compliment to the wisdom and consistency of the distinguished men who formed the treaty of 1783, to suppose that, in tracing a line from the head of St. Mary's to the mouth of St. Louis river, they would make so great a deviation from the plain and obvious course, and twice traverse the whole breadth of lake Superior, for no other conceivable purpose than to encompass the inconsiderable territory of Isle Royale, lying (as it would do, were this the correct line) close upon the British main land, and place it within the limits of the United States. On the other hand, if the Kamanistiquia route be assumed as the correct one, the description of the treaty will be consistent and harmonious. A straight line through lake Superior from St. Mary's river to the mouth of the Kamanistiquia would be intercepted by Isle Royale ; but the most direct *water* route between the two points would be to the north rather than to the south of Isles Royale, Pâté and its consorts, (presumed to be Isles Philipeaux ;) and hence the peculiar applicability of the expressions in the treaty—" to the northward " of those islands. This argument in favor of the Kamanistiquia route, as contrasted with that of St. Louis, will apply with nearly equal force in favor of the former, in its competing claim with the mouth of the Pigeon river, and the commencing point of the Grand Portage, hereafter mentioned ; for although the two latter places are, like the former, covered from the head of St. Mary's straits by Isle

Royale, yet their situations are near the southern, as that of the former is near the northern extremity of that island; and had it been the intention of the framers of the treaty of 1783 to trace the boundary either to the Grand Portage or to Pigeon river, and to reach the point of destination by the plainest and shortest water route, they would have conducted the line to the *southward* instead of "to the northward" of Isle Royale.

The route from the mouth of Kamanistiquia to the Lake of the Woods, by Dog or Long lake, and Lac La Pluie, is probably the best, and affords a more continuous water communication than any other into that country. It was probably (notwithstanding the opinion of Mr. McGillivray to the contrary) the route of the French traders, as it is at present that of the English.

In the next place, the undersigned would observe, that the only evidence adduced by the British agent and the commissioner *in support* (if it be not a misapplication of the term thus to call it) of the British claim to the river St. Louis as the boundary, is comprised in the ancient maps of that country, now on the files of the commission; and in two letters addressed to the British agent, Mr. Hale, and dated in the year 1824, by the late Mr. McGillivray, a very respectable and intelligent British subject.—(E Nos. 1 and 2.)

The evidence of the maps, instead of supporting, will, it is believed, be found to militate most decidedly against the pretensions of the St. Louis river as the boundary. It is worthy of observation, that all the old maps, although in many other respects discrepant and erroneous, are remarkably uniform and correct in their delineations of the southwestern parts of lake Superior, and of the river St. Louis. They all represent this river as emptying into the extreme southwestern bay, or projection of the lake, called Fond du Lac; they all describe it to be (what in truth it is) much the longest stream that discharges itself into lake Superior; and they all concur in giving to it the name of the river St. Louis. And would not the parties to the treaty of 1783, if they had intended this large and well known river as a part of the boundary, have so expressed themselves? On the other hand, the river Kamanistiquia is but a small stream, in reference to the quantity of water it discharges, and in shape partakes quite as much of the character of a lake as a river. Sometimes spreading into a broad and still sheet of water, and at others contracting into a narrow river or rapid, the appellation of lake, or water communication, may be applied to it with equal propriety as that of river.

But the letters of Mr. McGillivray to the British agent, proffered to the board by the latter as evidence of the true course of the boundary, are still more decisive against the river St. Louis. Mr. McGillivray was long at the head of the British Northwest Company trading with the Indians, and was particularly and personally conversant with the geography of the interior, and, at the time of writing the above-mentioned letters, was probably the best living authority on this subject. His testimony against the St. Louis is so direct and decisive, that the undersigned cannot forbear transcribing one or two passages from his letters, which letters are interesting and instructive throughout, and may be found in their entire state on the files of the board: "If the route," (says he,) "by the St. Louis, or Fond du Lac, could be established as the

boundary, computed Such an ar stated as o the Woods

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boundary, it would be gaining a great extent of country. The distance computed from the Grand Portage to the Fond du Lac is eighty leagues. Such an arrangement, however, cannot be hoped for, although it may be stated as one of the waters connecting lake Superior with the Lake of the Woods."

Again: "That the route by the Grand Portage to Lac La Pluie, (the only one practised and known to the French Indian traders,) was the one contemplated by the treaty, I have but little doubt."

From these extracts, as well as from other passages in the same letters, it is evident that Mr. McGillivray considered the boundary intended to be described by the treaty of Paris as identified with what is called "the Grand Portage route;" a route well known to the Northwestern traders, as commencing at a point on lake Superior, near the mouth of the Pigeon river, (called by Mr. McGillivray Rivière aux Tourtres,) which will be hereafter noticed, and which empties into lake Superior, abreast of Isle Royale, and about 80 leagues to the northeast of the mouth of the St. Louis river, or Fond du Lac. That St. Louis river cannot, therefore, be the correct course of the boundary, is proved by the evidence adduced by the British agent and commissioner themselves.

Before closing this report, it may be proper to advert to two propositions made by the respective commissioners for a compromise, and which may be seen at large on their journal, under date of October 23d, 1826. Anxious to bring their labors to an amicable and effective termination, and doubting whether this boundary could ever be definitively settled without some concession of opinion by each party, they were respectively induced to make the following propositions, namely:

The American commissioner proposed to relinquish the Kamanistiquia route, provided that his colleague would consent to run the line from the mouth of the Pigeon river, or Rivière aux Tourtres, up the middle of that river, and thence, through the most continuous water communication, to Lac La Pluie, as described on the journal.

Besides the general disposition to effect an amicable adjustment of the boundary, the undersigned was the more readily inclined to make this offer, from the circumstance, that during the deliberations of the board, evidence was introduced which seemed to establish the fact, that, at the time of concluding the treaty of 1783, the commissioners who prepared and signed it had before them, as one at least of their guides, Mitchell's map of North America; and it so happens that this map locates Long lake at the mouth of Pigeon river, (where in truth no such lake exists,) in contradiction to the authority of most of the other early geographers, who place it on the Kamanistiquia, where there actually is such a lake.

The British commissioner, on the other hand, offered to abandon the river St. Louis, on condition that his colleague would agree to accept the Grand Portage route, commencing on lake Superior, about six miles to the southwest of the mouth of Pigeon river; thence, up that river, and following the Portage route, alternately by land and water, to Lac La Pluie, as described on the journal.

This last is the route assumed by Mr. McGillivray; and it appears from his letters that the only question in his mind as to the course of the boundary intended by the treaty, was, whether it should follow this route, or take the water route proposed (by way of compromise) by the undersigned, commencing in and proceeding up Pigeon river, &c.; and

that he has been induced to adopt the former, on the ground that it would accommodate each party with a convenient thoroughfare for their trade to the Northwest.

Although the difference between the two commissioners was by the above propositions greatly narrowed, and, indeed, rendered of little consequence in point of territorial extent and value; yet the undersigned, considering the obligation imposed by the treaty to follow a water communication, where one could be found, as imperative, did not feel himself at liberty to accede to the proposition of his colleague.

To a subsequent modified proposition of the British commissioner, to take a water line commencing in the mouth of Pigeon river, and thence proceeding to Rainy lake, accompanied by a stipulation that the Grand Portage route should be made free and common to the use of both parties, he also felt it to be his duty to object, on the ground that such a stipulation would involve the exercise of powers not confided to him by his commission.

In closing this report, the undersigned has only to express his hope that he may have been successful in his attempts to explain the principles by which he has been governed, and the manner in which he has endeavored to apply them in the execution of the important trust committed in part to him; and if so, he is sure that he has equally succeeded in repelling the hasty, not to say unworthy, imputation which has been cast on him, of changing the principles of his decisions to suit the varying interests of his own Government.

PETER B. PORTER.

Witness: DONALD FRAZER,
Secretary to the commission.

Extract from the argument of the agent of the United States, (Joseph Delafield, Esq.,) setting forth so much thereof as refers to the boundary line from lake Superior to the Rainy lake, and more especially to his claim, in behalf of the United States, to the Long lake on the river Kamanistiquia; filed October 6, 1826, and referred to in the foregoing report.

The surveyors proceeded beyond lake Superior, and were directed, by instructions dated at Utica, in June, 1822, in execution of the 7th article of the treaty, as follows: "After passing lake Superior, ascertain the position of Long lake, or, if no lake of that name is to be found, the chain of waters supposed to be referred to in the treaty by that designation. Should you discover (as you probably will) that these waters do not communicate with lake Superior, ascertain what rivers or waters, divided by a height of land, and emptying one into lake Superior, and the other into the Lake of the Woods, approximate most nearly, &c. Also, after perambulating and ascertaining the approximating waters between lake Superior and the Lake of the Woods, if any doubt should be entertained by you as to the direction which the boundary ought to take, we wish to be advised of it as early as practicable, in order that we may proceed, if necessary, to that place, to determine such difficulty."

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It is very obvious, from these instructions, that the commissioners inclined towards the Grand Portage route, or Long lake of Mitchell's map; insomuch that by this route no lake by that name is to be found, and a chain of waters communicating, emptying, and approximating, precisely as set forth by their instructions, is to be found. The instructions, however, permitted the exercise of discretion, founded upon a better knowledge of the country, collected as the surveyors advanced.

The American surveyor had some hesitation in deciding upon the Long lake intended, and upon the most continuous chain of waters. Doubts were produced by increased knowledge of the country. The British surveyor had no doubts, but led the way to the Grand Portage, assuming the Pigeon river to be the Long lake. The American surveyor, yielding to the general belief, and knowing that to explore and delineate this route with sufficient accuracy would require the united labors of both parties for more than one season, consented to pursue it. He explored the whole distance to the Lake of the Woods, ascertaining that by certain deviations from the old track of the traders, (to which the British parties then confined themselves,) the water communication from lake Superior to the height of land was continuous; that at the height the waters approximate very nearly; and that, from the height westward, they emptied into the Lake of the Woods. To accomplish this survey they devoted the following summer, having remained over winter for the purpose.

At the meeting of the board at Albany, in February, 1824, the surveyors made report, both of them exhibiting the continuity of the water communication they had explored, and neither of them expressing any doubt "as to the direction the boundary ought to take."

The agents were then called upon to express "their opinions of what remained to be done, showing the narrowest possible limits to where the future operations of the surveyors might be confined."

The agent of the United States considered that the commissioners were satisfied with the result of their present operations. Their instructions had been complied with in every respect.

He accordingly presented a memorial, praying that if the Long lake of the treaty was not doubtful, the surveyors should be confined to the limits already explored.

The British agent objected generally to the sufficiency of the surveys; the board made no formal decision about the Long lake, upon which question depended entirely the course of the boundary and the extent of the surveys; but, by its further instructions, implicitly and virtually decided the question.

They direct: "Proceed as early as practicable in the spring to complete the surveys yet required along the water communication, from the mouth of Pigeon river to the most northwestern point of the Lake of the Woods."

The instructions were fulfilled; and, at the meeting of the board in Montreal, in October, 1824, the surveyors reported their operations, without, as before, expressing any doubt as to "the direction the boundary ought to take."

It was now thought that the business of the commission was so matured that certain prominent doubts should be formally removed. The agent of the United States, therefore, again presented a memorial ask-

ing that the board do now proceed to determine what was meant by the Long lake, and offered several documents in evidence to enable the commissioners to decide. His motives for urging this course had been strengthened by a personal examination of the country. The water communications hitherto unexplored were found to be exceedingly numerous. From the height of land, which is the dividing ridge between the valleys of Hudson's bay, the St. Lawrence, and the Mississippi, they flow by very many channels into their respective basins. How many converge into the known route, and how many of the streams emptying into lake Superior have their sources in the height of land, from which height they again flow westward toward the Lake of the Woods, must remain undetermined. Under the most advantageous circumstances, it is no easy matter to penetrate the Indian territory beyond lake Superior by the ordinary roads; and, when a new route presents itself, it is next to impracticable. Every few miles is obstructed by a rapid or a fall; no carrying place is at hand; the cliffs, the swamps, and the scraggy growth of the woods, deny further ingress; and by the time a few obstacles of this kind are overcome, the approach of winter and expenditure of provision demand a retreat.

One well known and continuous chain of waters (as prescribed by mutual instructions) had alone received the notice of the commission; it offered a natural and convenient boundary, so that it was not for the undersigned to recommend measures calculated to produce delay, or to set up claims at variance with the instructions.

For these reasons, it was desirable to identify the Long lake of the treaty; and a decision was urged. The British agent, however, interposed a counter-memorial, as before, suggesting the expediency of further surveys, without specifying them. The determination of the Long lake was postponed; but positive instructions were now given that the maps of the routes already surveyed be finished, and it was ordered as follows:

"If it shall be ascertained that the season shall admit of further operations, without hazarding the *certain completion* of the work already prescribed in the foregoing instructions, the surveyors may be employed, during the remainder of the season, in making such further surveys and examinations as either of the commissioners may direct and deem important to the better understanding and designation of the true course of the boundary line."

At this meeting the British commissioner declared his intention to order his surveyors to explore a route far to the south of the Grand Portage, viz: the Fond du Lac or St. Louis river route, in pursuance of the provisional clause of the above instructions.

The commissioner of the United States refused to allow the same as a joint order.

Thus, at a late day, the first avowal is made that the present operations were unsatisfactory, and for the first time that any doubts existed "as to the course the boundary ought to take."

These explanations are essential to the proper introduction of the claim the undersigned now advocates, because it is not that which at one time he might have acceded to. The implied admission, if not certainly to be found in the instructions, that the boundary would be fixed by the Pigeon river; the impracticability of protracting all the routes on

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maps, in a manner worthy the objects in view of this commission, within a space of time that any of the parties now present could expect to witness; and, above all, the conviction that further surveys would leave undecided the boundary between the two countries, induced him very willingly to abide by the surveys already had. The prospect of immediate decision was dispelled when the British commissioner turned his attention towards the St. Louis. The instructions were no longer mutual. The same act, too, dissolved any obligation there might have been in making claims to be governed by the previous *joint* instructions. Accordingly, another route more conformable to the treaty, as evinced by the facts now ascertained, is preferred by the agent of the United States. It is not meant that the undersigned has at any time considered that his right to adopt this route had been abridged. He complied, as he thought, to the liberal spirit of compromise which appeared to have harmonized conflicting opinions; and when he offered certain documents corroborative of the Long lake of Mitchell's map, it was with this view alone.

Those documents are no longer to the purpose; and he is the better pleased with this new direction given to the subject by the ex-parte instructions of the British commissioner, because it releases his claim from any inconsistency with his former memorial, and presents the allegation that further surveys may be required by reason of measures pursued on the part of the United States.

[After describing the several places called "Long lake," namely, the Long lake of Mitchell's map, by the Pigeon river, that of the Kamanistiquia river, and the Long lake back of the Pease, the American agent continues:]

The agent of the United States now claims and advocates the middle one of the three described communications as to the intended boundary; and that the Dog lake of the present traders, situate on the river Kamanistiquia, is the Long lake of the treaty, he will prove, in the first instance, by *maps*. The identity of a place never visited or known by the parties naming it, especially when those parties are not witnesses, can in no other manner be so well determined. The common acceptation at the time it was described, should determine the question. The following maps are therefore offered in proof of the identity of the Long lake, of its notoriety in 1783 and anterior, and of the boundary line having been designated in the definitive treaty, conformably to the evidence they contain:

First. "A map of Canada and the north part of Louisiana, with the adjacent countries, by Thomas Jeffries, geographer to his Majesty, dated 1762; published by Thomas Jeffries, near Charing Cross, London."

This map is contained in a work entitled "Voyages from Asia to America, &c., translated from the high Dutch, by J. Miller, with the addition of three new maps by Thomas Jeffries, geographer to the King." This map of Canada is of older date than any other the undersigned has been able to find, giving a true and particular delineation of the country between lake Superior and the Lake of the Woods; and, strange as it may seem, it is more accurate in this respect than any later maps, excepting those of the last few years. The water communications by the St. Louis, the Pigeon river, and the Kamanistiquia, are severally traced upon it with fidelity; and the height of land separating the waters which flow eastward from those which flow westward, by each route, is

designated. This excellent map proves the position contended for; the Long lake is laid down on the Kamanistiquia; it carries with it internal evidence of actual surveys and observations, and faithful composition.

Second. "A map of North America, from the French of Mr. D'Anville, improved, with the English surveys made since the peace; published in London, June 10th, 1775."

By this map also it will be seen that the Long lakes are laid down by name on the Kamanistiquia river.

Third. "A map of the British empire in North America, by Samuel Dunn, mathematician; improved, from the surveys of Captain Carver;" published in London, 1776. The Long lakes are also laid down on this map on the Kamanistiquia.

These two last-mentioned maps are from a series entitled "An atlas of the whole continent of America, wherein are delineated at large its several regions, countries, states, islands, and chiefly the British colonies, composed from numerous surveys, of which several were made by order of Government, by Captain Holland, Captain Carver, Lewis Evans, William Scull, Henry Monson, Lieutenant Ross, J. Cooke, Michael Lane, Joseph Gilbert, Gardner Hilloch, &c., engraved on 48 copperplates, by the late Mr. Thomas Jeffries, geographer to the King."

Fourth. A map entitled "The British colonies in North America, engraved by Mr. Faden, 1777," in Faden's American Atlas. On this map the Long lake is also laid down on the Kamanistiquia.

Fifth. A map entitled "The United States of America, with the British possessions of Canada, Nova Scotia, and Newfoundland, divided; with the French and Spanish territories of Louisiana and Florida, according to the preliminary articles of peace, signed at Versailles, the 20th of January, 1783: London, printed by Sayre and Bennett, and dated the 9th of February, 1783."

On this map the Long lake is laid down on the Kamanistiquia, where the Dog lake lies; and, what is perfectly conclusive, the boundary line is engraved upon it, passing north of Isle Royale to the Kamanistiquia, and thence to the said Long lake.

This map is taken from an atlas entitled "The American Atlas, or a geographical description of the whole continent of America, wherein are delineated at large its several countries, states, and islands, and chiefly the British colonies, composed from numerous surveys, several of which were made by order of Government, by Major Holland, Lewis Evans, William Scull, Henry Monson, Lieutenant Ross, J. Cooke, Michael Lane, Joseph Gilbert, Gardner Hilloch, &c., and engraved on 49 copperplates, by the late Thomas Jeffries, geographer to the King," &c.

Sixth. A map entitled "The United States of America, laid down from the best authorities, agreeable to the peace of 1783; published April 3d, 1783, by the proprietor, Jno. Wallis, London." On this map, likewise, the Long lake is laid down on the Kamanistiquia, and the boundary line is engraved as before, through the Kamanistiquia and its Long lake.

Seventh. A map entitled "A new map of the United States of North America, with the British dominions on the continent, &c., by Samuel Dunn, mathematician, improved, from the surveys of Captain Carver; printed in London, for Thomas Sayre, and dated June 10th, 1786."

On this map the Long lake is laid down on the Kamanistiquia, and

the boundary same, and the fourth map of Government.

Eighth. A British possession of Newfoundland, Louisiana and Florida at Versailles and Whittle.

On this map the Long lake is the Dog lake before, through

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the boundary line engraved upon it; passing north of Isle Royale to the same, and thence to the Long lake. It is from the same atlas as the fourth map cited, purporting to be from surveys made by the order of Government.

Eighth. A map entitled "The United States of America, with the British possessions of Canada, Nova Scotia, New Brunswick, and Newfoundland, divided; with the French and the Spanish territories of Louisiana and Florida, according to the preliminary articles of peace, signed at Versailles, the 20th of January, 1783: London, published by Laurie and Whittle," May, 1794, &c.

On this map, too, composed with great care, and at a late date, the Long lake is laid down with much precision on the Kamanistiquia, where the Dog lake is; and the boundary line is engraved upon it, passing, as before, through the same river and lake.

Ninth. "A sketch of the western countries of Canada, 1791, accompanying the voyages and travels of an Indian interpreter and trader; by J. Long."

On this sketch the Long lake is also laid down on the Kamanistiquia, and the author's book fully demonstrates that of geographical facts he was extremely cautious and particular.

These several maps are relied upon by the undersigned as settling, beyond doubt, the Long lake intended by the treaty. In the first place, the maps of Jeffries published in London, 1762; the map of D'Anville, 1775; the map of Dunn, published in 1776; and the map of Faden, in 1777; show what was meant by the Long lake before the date of the treaty of 1783.

The map printed for Sayre and Bennett, in London, 9th February, 1783, and the map of Wallis, published in London 3d of April, 1783, show what place was understood by the Long lake, *at the date of*, and immediately after, the treaty of 1783; and the map of Samuel Dunn, published in London, June 10th, 1786, and that published by Laurie and Whittle, in May, 1794, show what place was understood by the Long lake, in Great Britain, at different periods subsequent to the date of the treaty.

Besides which, the several maps now presented, bearing date subsequent to the 20th January, 1783, all have the boundary line engraved upon them in exact conformity with the provisions of the treaty of peace, as is expressed by the publishers. One is published nineteen days after the promulgation of the treaty, purposely to show the limits of the British possessions in Canada, &c.; another is seventy-three days afterwards, from the best authorities, and for the same purpose; another is three years, and another is eleven years: all proclaiming the boundary line to be in one and the same direction. The whole of this evidence is derived from a source to which his Britannic Majesty's commissioner and agent will not except. The maps are composed and engraved by British geographers of the first reputation. The materials were mostly furnished by engineers and surveyors in the service of his Britannic Majesty, and do justice to their skill and perseverance: so much so, that the maps of Jeffries, in 1762, and Faden's, of the different sections of North America, published in 1777 and anterior, for accuracy of delineation and detail of survey, have not since been excelled, if equalled, by any publication concerning the same districts.

It might seem strange to those who have not investigated this subject,

that it should be thought necessary to produce such a weight of evidence to establish a point so simple and manifest. It is the preponderance of testimony which must decide. Other Long lakes and other boundary lines, engraved on other maps, will no doubt be exhibited: but are they equally credible? Are they consonant with the treaty description? And are they geographically true? The agent of the United States urges the comparison. Let the dates, the history of the Indian territories, and the knowledge of those countries in 1783, the authors of the maps, the materials from which they are composed, the truth of the surveys, and the circumstances under which they were published, be impartially considered. When the agent of his Britannic Majesty shall have produced those he intends to rely upon, the undersigned may ask permission to enter into these particulars. The map from the French of D'Anville, published in London in 1775, those of Jeffries in 1776, and that of Faden in 1777, it is to be observed, were issued at a period when the public mind was directed to the geography of North America with unusual interest. Between the dates of these publications and the treaty of peace, there was just time to settle the common understanding in regard to geographical positions. And nothing can be more reasonable than to believe that the commissioners, in 1783, entered upon their negotiations with views and information collected from these very maps. It is right to say *these very maps*; not only because they were the maps in circulation at the time, but because the map improved from the French of D'Anville has official authority, it being noted upon this map that "the boundaries of the provinces, since the conquest of Canada, are laid down as settled by the King in council;" and Jeffries's maps, because he was geographer to the King, and they were composed from actual surveys furnished by his Britannic Majesty's officers, Holland, Carver, Evans, Ross, &c.; Faden's map, because he was successor to Jeffries; and the other maps, because they bear internal evidence of the care and fidelity with which they were compiled. Then follow, immediately after the date of the treaty, the maps of Sayre and Bennett, of Wallis, and of Laurie and Whittle, setting forth, by engraved lines, the boundaries according to the provisions of the definitive treaty, and observing precisely the same lakes, and rivers, and names, as were laid down on the maps dated anterior to the treaty, and now offered in evidence.

This claim, like that to the Isles Philipeaux, does not depend solely upon the maps. Among the circumstantial considerations which sustain it, is the fact that there is no other Long lake proper, on any map yet found of previous date to the treaty of peace. The Long lake near the Grand Portage, it is granted, had a place upon some maps; but there is no lake there. It was well known to the geographers, as their maps evince, that, instead of a lake, there was but a small stream discharging into lake Superior at this place. On Jeffries's and Faden's and the old French maps, it is called the Groslier, or Gooseberry river, and now Pigeon river, a diminutive stream appropriately named. The error was, by rightful influence, equally well understood by the negotiators of the treaty; and therefore the Little Pigeon river could not have been their intended Long lake. On the Kamanistiquia, the Long lake, so marked, is literally a long lake; it is truly named and described; and the utmost diligence of the undersigned in searching among the old maps has not enabled him to discover any other Long lake proper, so named. In short,

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all the evidence bearing upon the subject, not adduced, applies to places north of the Kamanistiquia, and need not be particularized at present. The question is, therefore, whether it should be the true or the false Long lake which is intended by the treaty; whether it be that lake which exists in name, form and place, or some other which has neither form nor place.

Another confirmation of this claim is its consisting with the treaty. The line is determined to the northward of Isle Royale; Isle Royale is preferred because the position of Isles Philipeaux may be objected to, (if, however, the Isles Philipeaux of the undersigned were admitted, his argument would be incontrovertible,) that the line being conducted to this part of the lake, it is within Point au Tonnière, and Grand point of Thunder bay, into which the Kamanistiquia discharges; and consequently from thence, or from Isle Royale, it can have no other direction but to this river; if it should have, it will have been carried into a deep bay on the British side of the lake, for the unmeaning purpose of again carrying it out; thereby making a most improbable retrocession.

Thus the absolute proofs in this instance are sustained by argumentative or circumstantial ones, similar to those in the case of the Isles Philipeaux. The undersigned has candidly set forth the result of his investigation in search of the Long lake; he has been governed more by a wish to establish the true meaning of the treaty than to extend his claims; were it otherwise, he might have contended for the Long lake by the Messeyor or Peake, and more especially for his right to follow the Kamanistiquia to its source, and thence over the height, by the nearest continuous waters, to the Lake of the Woods.

JOS. DELAFIELD,
Agent of the United States, &c.

[See maps A 1 to 11.]

B.

Contents of the islands in the St. Mary's river, calculated in square miles and acres, and referred to in the commissioner's report:

The three principal islands in the strait, or water communication between lake Huron and lake Superior, called the Rivière Ste. Marie, are St. Joseph, St. George, and St. Tammany islands; the respective contents of which are as follows:

Isle St. Joseph, 141.9 square miles, or 90,816 acres.

Isle St. George, 40.5 square miles, or 25,920 acres.

Isle St. Tammany, 15.8 square miles, or 10,164 acres.

Drummond island, appropriated by the commissioners to the United States, and the Manitouline islands lying opposite to it, and appropriated to Great Britain, are properly considered to be in lake Huron. The last and greatest rapid, the Great Neebish, being opposite the head of isle St. Joseph.

JAMES FERGUSON,
*Principal surveyor to Commissioners under 6th
and 7th articles of the treaty of Ghent.*

MAY 1, 1827.

C.

*Affidavit of J. Ferguson, relative to the channels in St. Mary's river,
and of David Thompson to the same.*

CITY OF NEW YORK, ss.

James Ferguson, principal surveyor to the boundary-line commission under the 6th and 7th articles of the treaty of Ghent, being duly sworn, says: That, in his capacity as aforesaid, he has spent much time on the river St. Mary's, between lakes Huron and Superior; that he has repeatedly passed from lake to lake over the said river, and that the best and only channel for vessels is through lake George, and on the east side of isle St. George; that this channel is called the ship channel, and is used by all vessels which pass to St. Mary's; that the channel on the west side of isle St. George is called Canoe channel, and only has sufficient water for canoes, batteaux, and small boats.

JAMES FERGUSON.

Subscribed and sworn this 20th day of September, 1826, before me,

CLARENCE D. SACKETT,
Acting Commissioner, &c.

(Endorsed.) Filed by order of the board, October 5th, 1826,

DONALD FRASER,
Secretary.

RICHARD WILLIAMS,
Assistant Secretary.

The above is a true copy of an affidavit, with the certificate and endorsement thereon, now on the files of the Board.

DONALD FRASER,
Secretary.

CITY AND COUNTY OF NEW YORK.

David Thompson, astronomer and surveyor to the commission under the 6th and 7th articles of the treaty of Ghent, being duly sworn, deposes and saith: That the middle Neebish channel is much the shortest passage by the Sault de St. Marie into lake Superior, and that the depth of water therein is quite sufficient for loaded batteaux and canoes, by which it has been and is always navigated, in preference to any other channel.

DAVID THOMPSON,
*Astronomer and Surveyor to the Board of Commissioners
under 6th and 7th articles treaty of Ghent.*

Sworn before me, this 9th day of October, 1826,

PETER DUMPREY,
Commissioner, &c.

(Endorsed.) Filed by order of the board, October 9, 1826,

DONALD FRASER,
Secretary.

RICHARD WILLIAMS,
Assistant Secretary.

The above is a true copy of an affidavit, with the certificate and endorsement, now on the files of the board.

DONALD FRASER,
Secretary.

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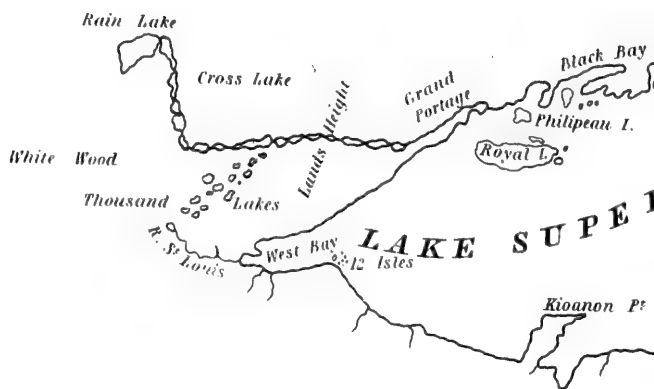
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An accurate Map of the
UNITED STATES OF AMERICA
according to the Treaty of Peace
1783.



True Copy from the original in the Atlas
for Winterbothams America. 1796.

George W. Whistler

Draftsman & Ass^t Surveyor

New York Published by Smith and Weylan.

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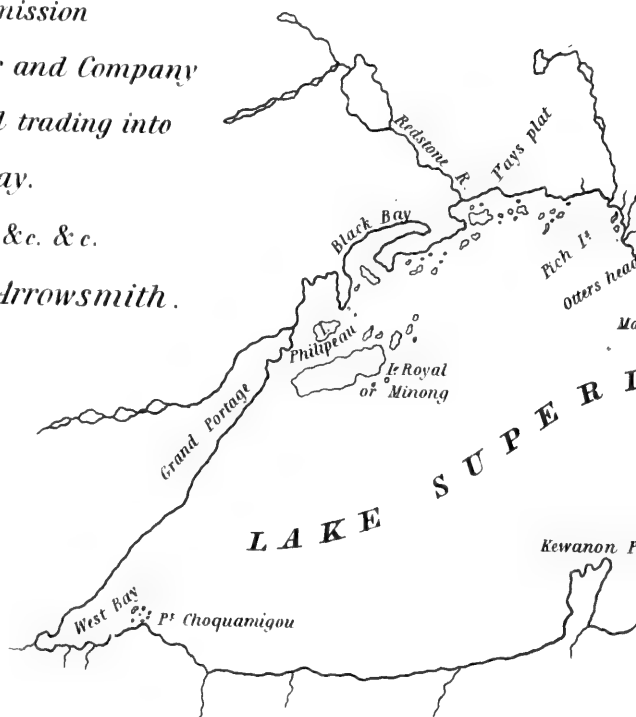


Map
Exhibiting the new discoveries
the interior part of
NORTH AMERICA

inscribed by permission
To the Honorable Governor and Company
of adventurers in England trading into
Hudsons Bay.

Inscribed &c. &c.

A. Arrowsmith.



Charles Street Soho

January 1st 1795 additions 1796

True Copy

George W. Whistler

Draftsman & Ass^t Surveyor

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Copy from a Map in the Topographical Bureau

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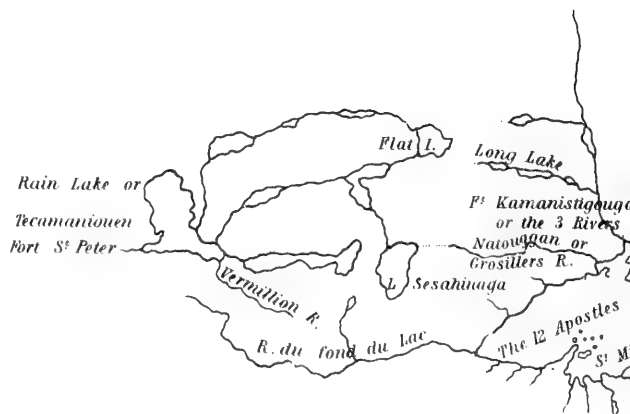
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1762 Pub

*Map of
Canada
and the North Part of
Louisiana
with the
Adjacent Countries
by Tho^s Jeffries Geographer
to his Majesty*



*True Copy from the original in Jeffries
2 edition of Mullers Voyages*

George W. Whistler

Draftsman & Ass^t Surveyor

1762 Published by Tho^s Jeffries near Charing Cross London.



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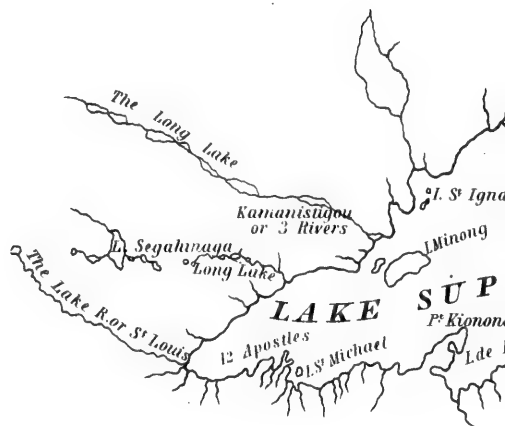


NORTH AMERICA

From the French of M.D. Anville

Improved

With the Surveys made since the Peace.



London Printed for Rob^t Sayer & J. Bennett

Map & Print sellers 53 Fleet Street

1775

True Copy from the Original

George W. Whistler

Draftsman & Ass^t Surveyor.



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*A Map of the
British Empire in North America*

by Samuel Dunn Mathematician

Improved from the surveys of Capt Carver



True Copy from the original.

George W. Whistler.

Draftsman & Ass^t Surveyor.

London Published for R. Sayer & J. Bennett Map & Se

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*A Map of the
British Empire in North America*

by Samuel Dunn Mathematician

Improved from the surveys of Capt^r Carver



True Copy from the original.

George W. Whistler.

Draftsman & Ass^t Surveyor.

London Published for R. Sayer & J. Bennett Map & Sea chart Sellers 53 Fleet Street. 1776.

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*The British Colonies in
North America*

*Engraved by
William Faden.*

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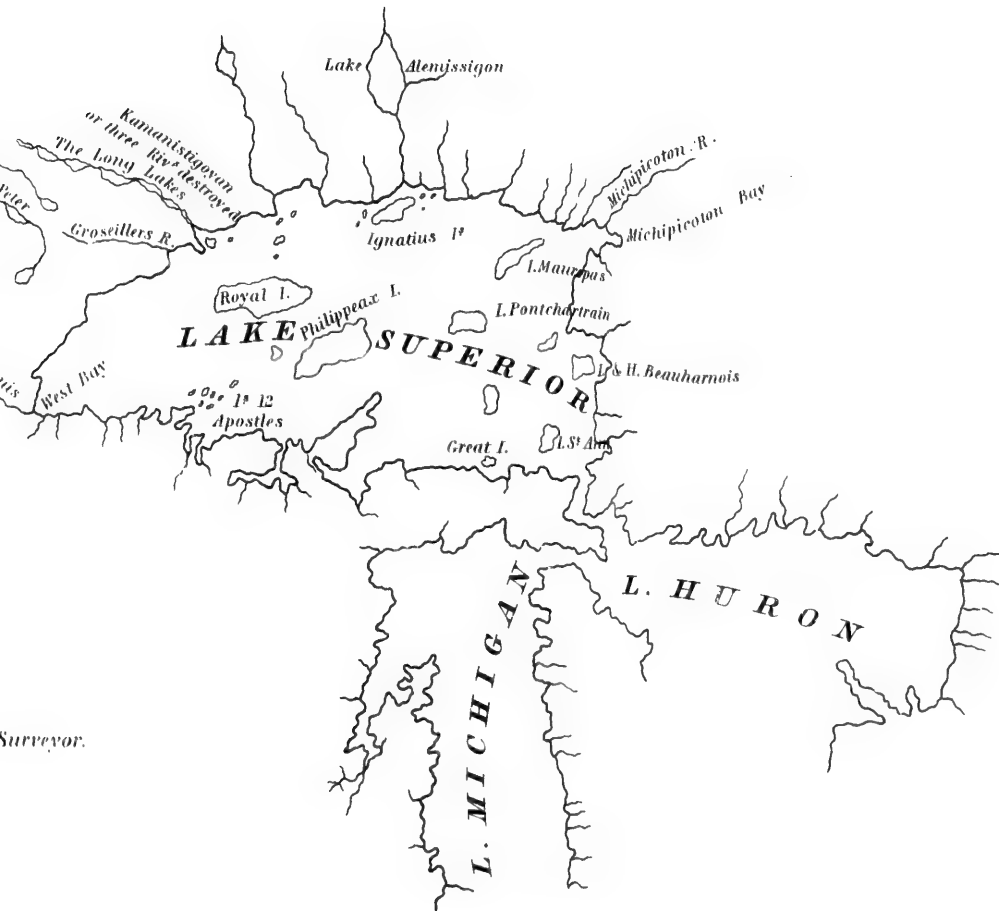


True Copy from the original in Faden's Atlas

London. Published 1777.

George W. Whistler

Draftsman & Ass^t Surveyor.



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THE UNITED STATES OF AMERICA

with the British Possessions of

Canada, Novascotia, New Brunswick & New Foundland,

divided with the French

also the Spaniards Territories of

Louisiana and Florida

according to the Preliminary Articles of Peace signed

at Versailles the 20th of Jan^y 1783.

London. Published for R. Sayer and J. Bennett 53 Fleet Street.

1783.



True Copy from the original.

George W. Whistler.

Draftsman & Ass^t Surveyor.

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THE UNITED STATES OF AMERICA

*Laid down from the best authorities, agreeable
to the Peace of 1783.*

*Published April 3^d 1783, by the Proprietor John Wallis at his
Map Warehouse Ludgate Street.*

London.



True Copy from the original.

George W. Whistler.

Draftsman & Ass^t Surveyor.



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with the
British Dominions on that Continent
by Samuel Dunn Mathematician
Improved from the Surveys of Cap^t Carver



True Copy from the original

George W. Whistler

Draftsman & Ass^t Surveyor.

London Printed for Rob^t Sayer Sea Chart Seller 53

*A new Map of the
United States of North America
with the
British Dominions on that Continent &c.*

by Samuel Dunn Mathematician

Improved from the Surveys of Cap^t Carver



True Copy from the original

George W. Whistler

Draftsman & Asst. Surveyor.

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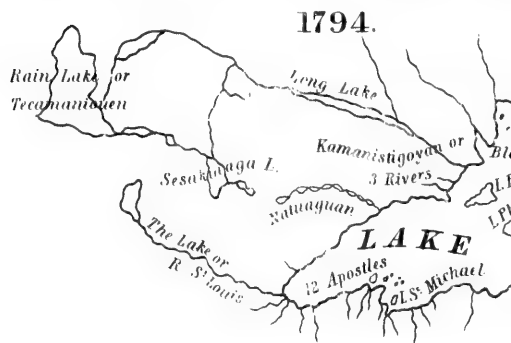
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THE UNITED STATES OF A
with the British Possessions of
Canada, Novascotia, New Brunswick
divided with the French
also the Spanish Territories of
Louisiana and Florida
according to the Preliminary Articles of Peace
at Versailles the 20th of Jan^y 1763

London, Published by Laurie & Whittle, 53 Fleet



True Copy from the original.

George Whistler.

Draftsman & Ass^t Surveyor.

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New Brunswick & New Foundland,

ceded with the French

Spanish Territories of

and Florida

preliminary Articles of Peace signed

on the 20th of Jan^y 1783.

Printed by Laurie & Whittle, 53 Fleet Street.



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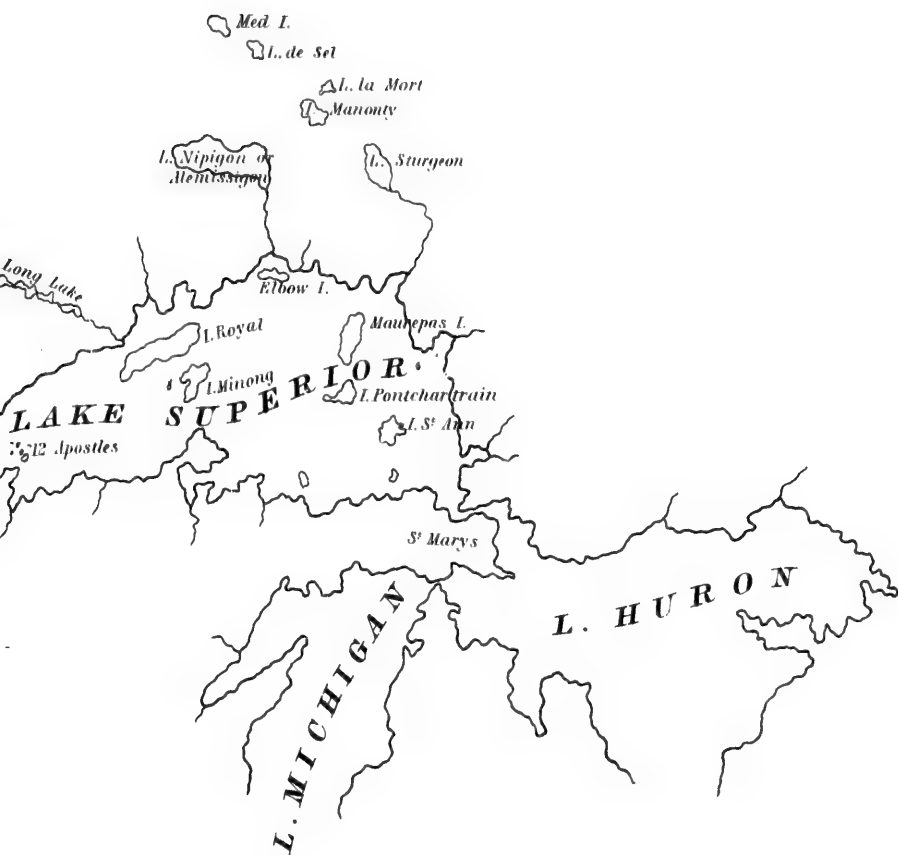


True Copy from the original in J. Long's Voyages

London Published 1791.

George W. Whistler.

Draftsman & Ass^t Surveyor.



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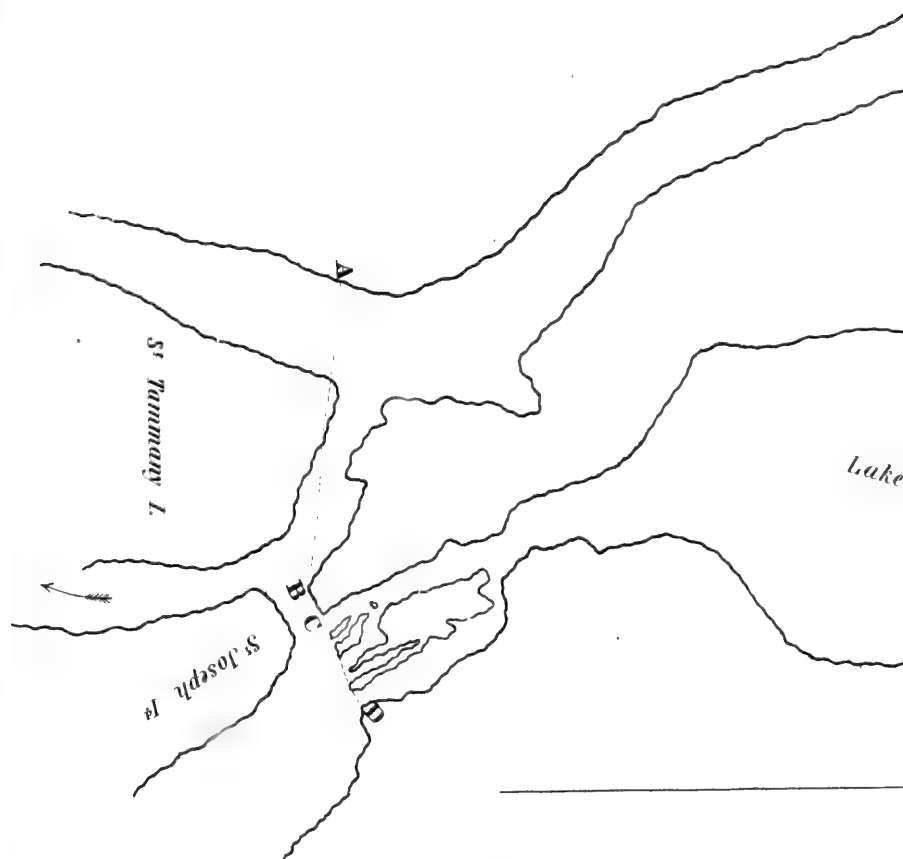
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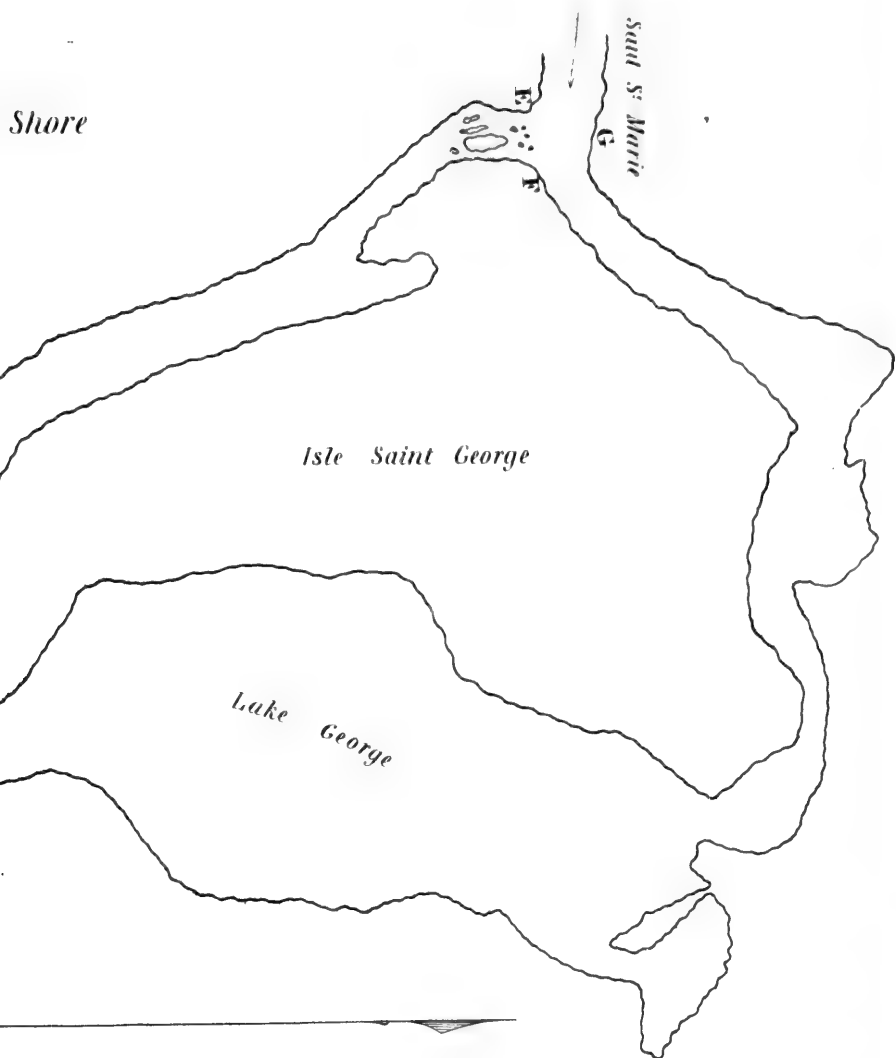
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DECEMBER

D.

Mr. Bird's sketch of isle St. George, with his calculation and certificate.

(See sketch, prefixed.)

I have calculated the superficial contents of the two channels or arms of St. Mary's river, (or the water communication between lakes Huron and Superior,) which enclose St. George's or Sugar island, and the result is as stated below.

These calculations were made from the large maps and surveys prepared by order of the commissioners, and now on the files of the board. The reduced sketch on the opposite page (without pretence to strict mathematical accuracy) is placed here for the purpose of showing at a single glance, and without the trouble of recurring to the large maps, the manner in which I have divided the area, and the portions of river and islands, which I have included in the calculations respectively.

The superficial contents of the British channel, bounded on one side by the British main land, on the opposite by isle St. George, and at the two ends (see the sketch) by the lines C D and F G, and including the several *small* islands scattered along the channel, are 27,506 acres.

The contents of the American channel, comprehended within the American main shore and St. George's island, and the two lines A B and E F, and including the <i>small</i> islands within the same, are	-	12,206
The contents of St. George's island, as calculated by Mr. Ferguson, are	-	25,920

Making the whole space or area embraced by the two shores	-	-	-	-	-	-	65,632
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Divide the whole area into two equal quantities, by a middle line drawn from the upper end of the island at F, to the lower end between B and C, and there will be found—

On the British side of the line.

Of water and <i>small</i> islands	-	-	27,506
Of isle St. George	-	-	5,310
			<u>32,816</u>

On the American side.

Of water and <i>small</i> islands	-	-	12,206
Of isle St. George	-	-	20,610
			<u>32,816</u>
			<u>65,632</u>

W. A. BIRD, *former Principal Surveyor*
under 6th and 7th articles of treaty of Ghent.

DECEMBER 1, 1827.

E No. 1.

Letter of Wm. McGillivray to Hon. John Hale, dated

MONTREAL, September 4, 1824.

MY DEAR SIR: I received the favor of your letter of the 27th July, the moment I was setting out for the falls of Niagara; which circumstance prevented my making an immediate reply. That I have so long delayed it, I feel demands from me an apology, for I returned last week from my excursion. I hope it is not yet too late, and shall therefore proceed without further preamble, though I fear my observations will not be of much service.

The surveys made of the lake Superior last summer, and the previous examination of its coast by Mr. Thompson and others, show sufficiently that no inlet (to deserve the name) is to be found on its northern shore. Opposite to the west end of isle Royale, (or isle Minos, as it is generally called,) is a small inlet or bay, into which falls the *Rivière aux Tourtres*, which is navigable for about half a mile, when you come to the rapids. About nine or ten miles westward of this river is the *Grand Portage*, a carrying-place near three leagues in length, at the north end of which you again find the *Rivière aux Tourtres*; this river, or rather a chain of portages and rapids, is followed up to its source—perhaps in all forty miles—when you come to the height of land* dividing the waters which fall into lake Superior from those falling ultimately into Hudson's bay, through the Lake of the Woods and lake Winnipeg. At first, these waters are so trifling and shallow as not to have sufficient depth or width to pass a canoe of twenty-five feet with any loading; it, however, soon increases by the addition of several other small streams, and forms, by the time it falls into Lac La Pluie, a river of considerable magnitude; but the route of the *voyageur* from the height of land is impeded by many carrying-places and rapids, which connect the little lakes into which it frequently widens in its course. These lakes are in succession, (going into the interior,) 1st, *Laguinaga*; 2d, *Lac des Trois Blancs*; 3d, *Lac Croche*; 4th, *Lac La Croix*; and 5th, *Ana Meccan lake*; then *Lac La Pluie*. But these lakes are very distant from each other, though connected by rapids and carrying-places, except the two last mentioned, which are only separated by one carrying-place of no great length. How this route between lake Superior and Lac de la Pluie could ever be called the *Long lake*, I cannot conceive; for it is made up of shallow and narrow small rivers and rapids without number, and thirty-six carrying-places, together with the lakes above mentioned, with many others not worthy of a name.

By this route, and *this route only*, was the trade to the northwest country carried on by the French while in possession of Canada, and from the conquest until the year 1803 by the English traders; when the difficulties and expense attending the transportation of goods from lake Superior, by way of the Grand Portage, to Lac La Pluie, became so great that the Northwest Company removed the general depot to *Kaministiquia*, since called *Fort William*, stationed about fifty miles eastward of the Grand Portage. The whole length of the carrying-places from

* Hauteur des terres.

lake Superior to Lac La Pluie by this route is twenty-seven miles, which is less by *five* or *six* than by the other route. This new communication, I presume, can be no question in the present discussion, for it never was practised by the French as a communication to the interior, although they had trading-posts on the river Kamanistiquia, near the banks of lake Superior; and so little was it known, that, before the Northwest Company could venture to send canoes by it, a minute survey was made (by the writer of this) in 1802, in order to ascertain its practicability.

That the route by the Grand Portage to Lac La Pluie (the only one practised or known to the French Indian traders) was the one contemplated by the treaty of 1783, I have but little doubt. How it came to be designated in the French charts the *Long lake*, I cannot conceive.

There is, however, another route of communication into the interior from lake Superior, and the one which should have been fixed upon as the boundary line at the time of making the treaty of Paris.

Into the west bay of lake Superior, known by the name of *Fond du Lac*, falls the river St. Louis, by far the *largest* stream which that lake receives into its bosom. By this river, and in its vicinity, there is a route to the interior country, (to Lac La Pluie and the Lake of the Woods;) it was practised from the year 1796 by the Northwest Company until that country was given up to the Americans, in consequence of the treaty of Ghent; and has since that time been constantly used by the American Fur Company. I do not see why this route may not as well be called the *Long lake* as any other; it is, like all the other communications between lake Superior and Lac La Pluie, or the Lake of the Woods, made up of shallow rivers, rapids, carrying-places, and lakes. It is the only bay or inlet to be found on the north and west shore of the lake, and possibly may have been the route intended by the treaty; for both parties appear to have been equally ignorant of the geography of the country, although the one commissioner had more cleverness or cunning than the other.

As to the copy of the chart (said to be the identical one before them) now brought forward, admitting that it is a *real* copy, the reference in it to places which do not exist, and being evidently founded in error, I should think would do away any credit attached to it by the American commissioners. *Lac de la Pluie*, next in size and extent to the Lake of the Woods, is never mentioned as being a route to that lake; nor is the river connecting these two lakes, which is a large body of water, perhaps equal in magnitude to the Hudson river, and fifty or sixty miles in length. If the route by the river St. Louis, or *Fond du Lac*, could be established as the boundary, it would be gaining a great extent of country; the distance, computed from the Grand Portage to *Fond du Lac*, is eighty leagues. Such an arrangement, however, cannot be hoped for, although it may be stated as one of the routes connecting lake Superior to the Lake of the Woods. To the new route from Fort William they have no pretensions whatever, as it was never practised by the French, nor by the English traders until 1803; and one reason for the Northwest Company's abandoning the Grand Portage at the time, (which was done at a great sacrifice,) was a fear that the collector of the customs at Michilimackinac would send officers to raise duties on our goods; this had been threatened, and I have no doubt would have been attempted had we remained much longer at the Grand Portage. As to

whether the *Rivière aux Tourtres*, already mentioned, from its debouche into the lake, or the *road* in the Grand Portage until it strikes the said river, (which is really the ancient route, as the river to this point is altogether impracticable,) is perhaps the only question; and the space of country to be gained or lost by either party is of little or no consequence, as it is a mountainous, sterile tract; but, by making the river the boundary from the lake, there is no means of getting to the north end of the Grand Portage, (the point of embarkation for canoes;) it would, therefore, be excluding British subjects from going into the interior by that route; whereas, by making it through the Grand Portage to the same point of embarkation, it leaves the road open to both parties. This route is now but little *practised*, as most of the canoes going in pass by the Fort William route.

I am, my dear sir, most faithfully yours,

W. MCGILLIVRAY.

This is to certify to all whom it may concern, that for a long period I was intimately acquainted with the late Hon. William McGillivray, in his lifetime, of Montreal, and have very often seen him write; I, therefore, can aver and testify that the above letter is actually in his handwriting, and the subscription of his name (W. McGillivray) thereto is also in his handwriting.

HENRY CARY.

NEW YORK, September 29, 1826.

CITY AND STATE OF NEW YORK, ss:

Henry Cary, of the city of New York, merchant, being sworn, says: That the facts set forth in the foregoing certificate, subscribed by him, are just and true; and further says not.

HENRY CARY.

In testimonium veritatis, sworn before me this 29th day of September, 1826.

WM. E. DUNSCOMB,

Notary Public, city and State of New York.

Filed by order of the board, October 5, 1826.

DONALD FRASER,

Secretary.

RICHARD WILLIAMS,

Assistant Secretary.

E No. 2.

Letter from Wm. McGillivray to Hon. John Hale, dated

QUEBEC, August 30, 1825.

MY DEAR SIR: I delayed answering the letter with which you favored me, regarding the Western boundaries, in the expectation that I should have had the pleasure of finding you at this place. I had besides so very little to say on the subject, than an answer was of the less consequence; for, in fact, I have not a remark to make in addition to what I formerly communicated. The Northwest Company never used the route

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in question; that by the Grand Portage being a more direct one, and their depot being here established. Their distance from the inlet near the river St. Louis was eighty leagues of coasting. It was well known, however, that a route to the interior did exist in that direction, and that there was no other inlet, such as is spoken of or laid down in the French charts, to be found on the north or west of lake Superior. The American Fur Company at present practise this route to go in from Fond du Lac to the ports of Lac De la Pluie. Mr. William Morris (their chief in command at Fond du Lac) passed through it last season, as I am informed, and passed the winter on the line, near the Hudson Bay Company's post at Lac La Pluie. This proves the practicability of the route, and I believe the sum of waters is of much more magnitude than by any other of the traced routes to the interior; which, indeed, are but miserable small rivulets and carrying-places, with scarcely water sufficient to float what is called a Northwest canoe, not half the size of those used in the Grand river.

I am so far on my way to England. I am tired of the complaint which has so long teased me; I must endeavor to get rid of it if I can. I am sorry to find Mrs. Hale so very unwell; a change of scene and of treatment are both supposed to be salutary in most complaints; perhaps she may, therefore, be induced to follow my route.

With my wish for the prosperity of your family, I remain, my very dear sir, most truly yours,

WM. MCGILLIVRAY.

This is to certify to all whom it may concern, that for a long period I was intimately acquainted with the late honorable William McGillivray, in his lifetime, of Montreal, and have very often seen him write; I, therefore, can aver and testify that the above letter is actually in his handwriting, and the subscription of his name hereto is also in his handwriting.

JOHN RICHARDSON,

*Member of the Executive and Legislative Councils
of the Province of Lower Canada.*

MONTREAL, September 13, 1826.

Filed by order of the board, October 5th, 1826.

DONALD FRASER,

Secretary.

RICHARD WILLIAMS,

Assistant Secretary.

Report of the British Commissioner respecting the boundary line under the seventh article of the treaty of Ghent.

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REPORT OF THE BRITISH COMMISSIONER.

To the Government of his Britannic Majesty, and to that of the United States of America, the report of Anthony Barclay, Esq., commissioner appointed on the part of his Britannic Majesty to carry into effect the 6th and 7th articles of the treaty between his said Majesty and the said United States, concluded at Ghent, on the 24th day of December, 1814.

PART I.

SECTION 1. Whereas, in and by the before-mentioned 6th and 7th articles of the said treaty, it is provided as follows, to wit:

"Art. 6. Whereas, by the former treaty of peace, that portion of the boundary of the United States from the point where the 45th degree of north latitude strikes the river Iroquois or Cataraguy, to the lake Superior, was declared to be 'along the middle of said river, into lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence, along the middle of said communication, into lake Erie; through the middle of said lake, until it arrives at the water communication [between that lake and lake Huron; thence, along the middle of said water communication,] into the lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior;' and whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States: In order, therefore, finally to decide these doubts, they shall be referred to two commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. The said commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners shall, by a report or declaration under their hands and seals, designate the boundary through the said river, lakes, and water communications, and decide to which of the two contracting parties the several islands lying within the said river, lakes, and water communications, do respectively belong, in conformity with the true intent of the said treaty of 1783. And both parties agree to consider such designation and decision as final and conclusive. And, in the event of the said two commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements shall be made by them, or either of them; and such reference to a friendly sovereign or State shall be made, in all respects, as in the latter part of the fourth article is contained, and in as full a manner as if the same was herein repeated.

"Art. 7. It is further agreed, that the said two last-mentioned commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they are hereby, authorized, upon their oaths, impartially to fix and determine, according to the true intent

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of the said treaty of peace of 1783, that part of the boundary between the dominions of the two Powers which extends from the water communication between lake Huron and lake Superior to the most northwestern point of the Lake of the Woods ; to decide to which of the two parties the several islands lying in the lakes, water communications, and rivers, forming the said boundary, do respectively belong, in conformity with the true intent of the said treaty of peace of 1783 ; and to cause such parts of the said boundary as require it to be surveyed and marked. The said commissioners shall, by a report or declaration under their hands and seals, designate the boundary aforesaid, state their decision on the points thus referred to them, and particularize the latitude and longitude of the most northwestern point of the Lake of the Woods, and of such other parts of the said boundary as they may deem proper. And both parties agree to consider such designation and decision as final and conclusive. And in the event of the said two commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements shall be made by them, or either of them ; and such reference to a friendly sovereign or state shall be made, in all respects as in the latter part of the fourth article is contained, and in as full a manner as if the same was herein repeated."

SEC. 2. And whereas, by the 5th article of the said treaty of Ghent, it is agreed that "two commissioners shall be appointed, sworn, and authorized to act, exactly in the manner directed with respect to these mentioned in the next preceding article," [to wit, the fourth article.]

SEC. 3. And whereas, by the said fourth article, it is agreed that two commissioners shall "be appointed in the following manner, viz: one commissioner shall be appointed by his Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two commissioners so appointed shall be sworn impartially to examine and decide upon the said claims, according to such evidence as shall be laid before them, on the part of his Britannic Majesty and of the United States, respectively."

SEC. 4. And whereas, by the 8th article of the said treaty of Ghent, it is stipulated that "the several boards of two commissioners, mentioned in the four preceding articles, shall, respectively, have power to appoint a secretary, and to employ such surveyors or other persons as they shall judge necessary."

SEC. 5. And whereas, in the said fourth article, "it is further agreed that, in the event of the two commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said commissioners refusing, or declining, or wilfully omitting to act as such, they shall make, jointly or separately, a report or reports, as well to the Government of his Britannic Majesty as to that of the United States, stating, in detail, the points on which they differ, and the grounds upon which their respective opinions have been formed, or the grounds upon which they or either of them have so refused, declined, or omitted to act. And his Britannic Majesty and the Government of the United States hereby agree to refer the report or reports of the said commissioners to some friendly sovereign or state, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said report or reports, or upon the report of one commissioner, together

with the grounds upon which the other commissioner shall have refused, declined, or omitted to act, as the case may be. And if the commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such friendly sovereign or state, together with the report of such other commissioner, then such sovereign or state shall decide *ex parte* upon the said report alone. And his Britannic Majesty and the Government of the United States engage to consider the decision of such friendly sovereign or state to be final and conclusive on all the matters so referred."

SEC. 6. And whereas his Britannic Majesty was pleased most graciously to nominate, constitute, and appoint the said Anthony Barclay, his Majesty's true, certain, and undoubted commissioner, to meet, confer, decide, and conclude with a commissioner furnished with sufficient powers on the part of the United States of America, to be appointed in the manner prescribed in the sixth and seventh articles of the treaty of Ghent.

SEC. 7. And whereas it pleased the President of the United States of America to "nominate, and, by and with the advice and consent of the Senate, to appoint Peter B. Porter, of New York, commissioner on the part of the United States for carrying into effect the sixth and seventh articles" aforesaid of the last-mentioned treaty.

SEC. 8. And whereas the said commissioners were "sworn impartially to examine and decide upon the claims of the respective nations, according to such evidence as should be laid before them on the part of his Britannic Majesty and of the United States, respectively," in conformity with the provisions of the treaty of peace of the year one thousand seven hundred and eighty-three.

SEC. 9. And whereas, in and by the second article of the said treaty of one thousand seven hundred and eighty-three, it is stipulated in the following words, to wit: "And, that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are and shall be their boundaries, viz: From the northwest angle of Nova Scotia (viz. that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean) to the northwesternmost head of Connecticut river; thence, down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy; thence, along the middle of said river, into lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence, along the middle of said communication, into lake Erie; through the middle of said lake, until it arrives at the water communication between that lake and lake Huron; thence, along the middle of said water communication, into the lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior; thence, through lake Superior, northward of the isles Royale and Philipeaux, to the Long lake; thence, through the middle of the said Long lake, and the water communication between it

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SEC. 10. And whereas, on the 18th day of June, 1822, the said commissioners closed the execution of the duties assigned to them under the 6th article of the treaty of Ghent, by making their joint report of that date.

SEC. 11. And whereas surveyors and astronomers were then employed by the said commissioners to make a complete survey of the shores of the said rivers, lakes, and water communications, embraced by the 7th article of the treaty of Ghent, to fix the latitudes and longitudes of certain places, and to render accurate maps of the same.

SEC. 12. And whereas the said surveyors and astronomers have presented to the said commissioners a series of maps, purporting to be and contain true delineations of shores, and statements of latitudes and longitudes as therein set forth; which said maps were thereupon subsequently certified and signed by the said commissioners, and by the said surveyors and astronomers.

SEC. 13. And whereas the agents of the respective nations were cited by the said commissioners to appear and present the claims of their several Governments in relation to the said boundary; who, having duly advanced and supported the same, formally concluded their arguments thereupon.

SEC. 14. And whereas, at a board held by the said commissioners at the city of New York, on the 23d day of October, in the year of our Lord 1826, they caused the following entry of their further proceedings to be made in their journal, to wit: "The commissioners having carefully examined and considered the claims, proofs, and arguments, presented by the agents of the respective Governments, as well as the reports, maps, and observations, made and prepared pursuant to their instructions by the surveyors of the board, and having fully and freely conferred together, and exchanged opinions on the whole subject-matter referred to them, have agreed upon parts only of the boundary proposed to be established under the seventh article of the treaty of Ghent, and have disagreed as to other parts. In order, therefore, to prevent any future misunderstanding as to the opinions which they respectively maintain in regard to the course which the boundary ought to pursue, and to form a basis for the report or reports which they are required, in case of disagreement, to prepare, they now proceed to commit to the journal the result of their deliberations, by describing and declaring the course of the boundary so far as they have agreed, and specifying the points of difference in places where they could not agree.

SEC. 15. "*Thereupon, resolved*, That the commissioners disagree as to the course which the boundary line should pursue from the termination thereof, under the 6th article of the treaty of Ghent, at a point in the Neebish channel, near Muddy lake, to another point in the middle of St. Mary's river, about one mile above St. George's or Sugar island: the British commissioner being of opinion that the line should be conducted from the before-mentioned terminating point of the boundary line under the 6th article, being at the entrance from Muddy lake into the ship channel, between St. Joseph's island and St. Tammany's island, to the division of the channel at or near the head of St. Joseph's island; thence, between St. George's island and St. Tammany's island, turning west-



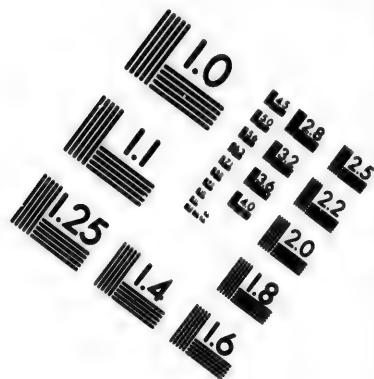
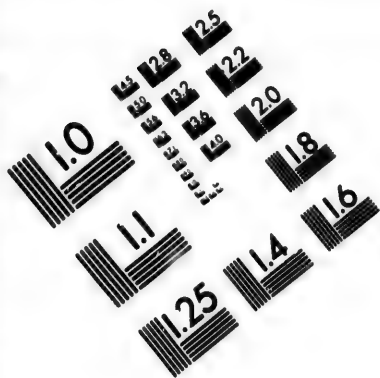
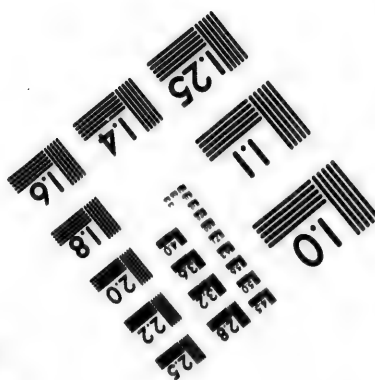
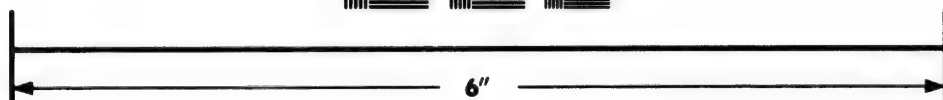
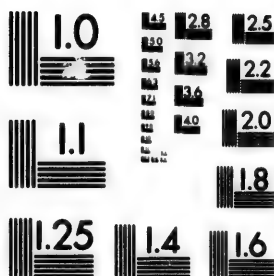


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wardly through the middle of the middle Neebish, proceeding up to and through the Sugar rapids, between the American main shore and the said St. George's island, so as to appropriate the said island to his Britannic Majesty: and the American commissioner being of opinion that the line should be conducted from the before-mentioned terminating point of the boundary under the 6th article, into and along the ship channel between St. Joseph's and St. Tammany's islands, to the division of the channel at or near the head of St. Joseph's island; (concurring thus far with the British commissioner;) thence, turning eastwardly and northwardly around the lower end of St. George's or Sugar island, and following the middle of the channel which divides St. George's island, first from St. Joseph's island, and afterwards from the main British shore, to the before-mentioned point in the middle of St. Mary's river, about one mile above St. George's or Sugar island, so as to appropriate the said island to the United States.

SEC. 16. "*Resolved*, That, in the opinion of the commissioners, the following described line, which is more clearly indicated by a series of maps prepared by the surveyors, and now on the files of this board, by a line of black ink, shaded on the British side with red, and on the American side with blue, is, so far as the same extends, the true boundary intended by the treaties of 1783 and 1814; that is to say, beginning at a point in the middle of St. Mary's river, about one mile above the head of St. George's or Sugar island, and running thence, westerly, through the middle of said river, passing between the groups of islands and rocks which lie on the north side, and those which lie on the south side the Sault de Ste. Marie, as exhibited on the maps; thence, through the middle of said river, between points Iroquois and Gros Cap, which are situated on the opposite main shores, at the head of the river St. Mary's, and at the entrance into lake Superior; thence, in a straight line through lake Superior, passing a little to the south of isle Caribœuf, to a point in said lake, one hundred yards to the north and east of a small island named on the map Chapeau, and lying opposite and near to the northeastern point of isle Royale.

SEC. 17. "*Resolved*, That the commissioners disagree as to the course of the boundary from the point last mentioned, in lake Superior, to another point designated on the maps at the foot of the Chaudiere falls, in Lac La Pluie, situated between lake Superior and the Lake of the Woods. The American commissioner being of opinion that the line between the said two points ought to take the following described course, namely: to proceed from the said point in lake Superior, and, passing to the north of the island named on the map "Paté," and the small group of surrounding islands which he supposes to be the islands called Philipeaux in the treaty of 1783, in a direction to enter the mouth of the river Kamanistiquia, to the mouth of said river; thence, up the middle of the river, to the lake called Dog lake, but which the American commissioner supposes to be the same water which is called in the treaty of 1783 Long lake; thence, through the middle of Dog or Long lake; and through the middle of the river marked on the maps Dog river, until it arrives at a tributary water which leads to Lac de l'Eau Froide; thence, through the middle of said tributary water, to its source in the highlands which divide the waters of lake Superior from those of Hudson's bay, near the Lac de l'Eau Froide; thence, across the height

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of land, and through the middle of the lakes and rivers known and described as the 'old road' of the French, to the river Savannah; and thence, through the middle of the Savannah, to Mille Lac; through the middle of Mille Lac, and its water communication with Lac Darade; through the middle of Lac Darade, and its water communication with Lac Winnebago; through the middle of Lac Winnebago, and its water communication with Sturgeon lake, to Sturgeon lake; through the middle of Sturgeon lake, and the Rivière Maligne, to Lac à la Croix; through the middle of Lac à la Croix, and its water communication with lake Namecan, to lake Namecan; thence, through the middle of lake Namecan, and its water communication with Lac La Pluie, to the point in Lac La Pluie where the two routes assumed by the commissioners again unite, as represented on the maps.

SEC. 18. "And the British commissioner being of opinion that the boundary ought to proceed from the before-mentioned point of agreement in lake Superior; namely, from the point in said lake, one hundred yards to the north and east of a small island named Chapeau, lying northeast of the northeast point of isle Royale, passing north of the said Chapeau island; thence, westward, passing north of island No. 2; thence, southwestward, passing close north of isle Royale, and all its contiguous islets, to the west end of the said isle Royale; thence, through the middle of lake Superior, passing north of the islands called the Apostles; thence, through the middle of the Fond du Lac, to the middle of the *sortie* or mouth of the estuary or lake of St. Louis river; thence, up the middle of the said lake and river, passing, midway, between the points No. 1 and No. 2, and southwest of the islets No. 3, No. 4, No. 5, No. 6, and No. 7; thence, midway, between the points No. 8 and No. 9; thence, through the middle of the said river, midway, between the points No. 10 and No. 11, and, midway, between points No. 12 and No. 13; thence, between the island No. 12 and island No. 14; thence, up the middle of the east channel, passing northwest of island No. 15 and island No. 16, and west of the point No. 17; thence, east of the island No. 18 and island No. 19, southeast of island No. 20, and between islands No. 21 and No. 22; thence, north of point No. 23, south of island No. 24, north of islands No. 25 and No. 26, south of island No. 27, and between islands No. 27 and No. 28, eastward, northward, and southwestward of island No. 28, and south of point No. 29, northeastward of islands No. 30, No. 31, and No. 32; thence, up the middle of said river, to the Grand Portage of about 11,915 yards, on the right or north side, having the river and falls on its south side; thence, through the middle of the road of this portage, and up the middle of said river, passing south and west of island No. 33, east and north of islet No. 34, south and west of island No. 35, east of islands No. 36, No. 37, and No. 38, and between islets No. 39 and No. 40; thence, up the middle of said river, to the Portage des Couteaux, of about 2,029 yards, on the left or south side, having the river and falls on its north side; through the middle of the said portage, and up the middle of the said river St. Louis, passing south of the islands No. 41, No. 42, No. 43, and No. 44, north of island No. 45, and east of island No. 46; thence, up the middle of the said river, passing east of islet No. 47, west of islets No. 48 and No. 49; thence, southwest of island No. 50; thence, west of islet No. 51, and west of island No. 52; thence, up the middle of the said river St. Louis, to its junction with the

Rivière des Embarras, on the left or northwest side of the river St. Louis; thence, up the middle of the Rivière Embarras, to and through a portage of about 32 yards, on the right or east side, having the river on the west side; thence, up the middle of the said river, to and through a portage of about 58 yards on either side of the river; thence, up the middle of the said river, and its lakes, to and through a portage of about 173 yards, on the left or west side, having the river and rapids on its east side; thence, up the middle of the said river, and its lake, passing between islets No. 1 and No. 2; thence, east of islets No. 2, No. 3, and No. 4; thence, to and through a portage of about 145 yards, on the left or northwest side, having the river on its southeast side; thence, through the middle of a small lake, to and through a portage of about 150 yards, on the left or northwest side, having the river and falls on the southeast side; thence, into a lake, and through the middle of the said lake, passing northwest of island No. 5 and island No. 6, to its northeast end; thence, up the middle of the said Rivière des Embarras, and through the middle of its lake, west of island No. 7, and to and through a portage of about 473 yards, on its right or northeast side, having the river and rapids on its west side; thence, through the middle of a small lake, to and through a portage of about 631 yards, on the right or east side, having the river and rapids on the west side; thence, up the middle of the said Rivière des Embarras, to the portage of the Height of Land, of about 6,278 yards, on the left or north side of the said river, being wholly on the right, coming from the southeastward; thence, through the middle of the portage of the Height of Land, to the southeast bank of the Vermillion river, coming from the westward; thence, down the middle of the said river, to and through a portage of about 1,200 yards, on the left or north side, having the river and its rapids on the south side; thence, down the middle of the said river, to and through a portage of about 457 yards, on the right or southeast side, having the river and rapids on the northwest side; thence, down the middle of the said river, to and through a portage of about 304 yards, on the left or northwest side, having the river and rapids on its southeast side; thence, down the middle of the said river, to the Great Vermillion lake; thence, through the middle of the said lake, south and east of island No. 1; thence, east of island No. 2; thence, west of island No. 3; thence, west of island No. 4, and east of island No. 5; thence, south of island No. 6, and north of islet No. 7; thence, south of island No. 8, south of island No. 9, and its contiguous islets, north of island No. 10; thence, southwest of island No. 9, and northeast of island No. 11; thence, west of island No. 12; thence, east and north of island No. 13, and north of islands No. 14, No. 15, No. 16, No. 17, and No. 18; thence, south of island No. 19, north of island No. 20, south and west of island No. 21, south of island No. 22, and between islands No. 23 and No. 24; thence, north of island No. 25; thence, down the middle of Vermillion river, to and through a portage on the right or east side, of about 378 yards, having the river and falls on its west side; thence, down the middle of the said river, to and through a portage of about 416 yards, on the left or northwest side, having the river and falls on the southeast side; thence, down the middle of the said river, to and through a portage of about 17 yards, on its right or south side, the river and falls being on its north side; thence, down the middle of the said river, and its lakes, to and through a portage of about 1,396

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yards, on the right or east side, the river being on the west side ; thence, passing northwest of islet No. 1, and north of islet No. 2, to and through a portage of about 176 yards, on the right or southeast side, the river and falls being on its north side ; thence, down the middle of the said river, to and through a portage of about 251 yards, on the left or west side, the river and falls being on the east side ; thence, down the middle of the said river Vermillion, to and through the Crane portage, of about 1,383 yards, on the left or northwest side, having the river and falls on its southeast side ; thence, down the middle of the said river, into Crane lake ; thence, through the middle of this said lake, passing north of island No. 1, east of island No. 2 and island No. 3, and east of islands No. 4 and No. 5, to the Sand Point lake ; thence, through the middle of this said lake, east of islet No. 1 and of island No. 2, east of islet No. 3 and island No. 4, and west of islet No. 5 ; thence, west of islet No. 6, and east of islets No. 7 and No. 8 ; thence, east of island No. 9, south of island No. 10, north of island No. 11, southwest of island No. 12 and islet No. 13, and northeast of island No. 14 ; thence, down the middle of its strait or river, to its entrance into lake Namecan ; thence, through the middle of said lake, passing close west of island No. 1 ; thence, westward, passing south of islet No. 2, then south of island No. 3, and islets No. 4, No. 5, and No. 6, and island No. 7 ; thence, north of islets No. 8 and No. 9 and No. 10, and south of island No. 11, north of No. 12, then south of islands No. 13, No. 14, No. 15, of islet No. 16 ; thence, northerly, passing west of island No. 17, and east of islet No. 18, of island No. 19, and No. 20 ; thence, passing east of island No. 21, and west of island No. 22 ; thence, east of No. 23, and down the middle of the river, southeastward of island No. 24 ; thence, passing north of island No. 25, and No. 26, and down the middle of the north channel, to a fall, having a portage of about 127 yards, on the left or north side ; thence, through said portage ; thence, down the said river, passing north of island No. 1, in the nearest channel to Lac La Pluie.

"For a better general understanding of the routes respectively assumed by the commissioners, in this case of disagreement, reference may be had to a reduced map on the files of the commission, marked 'A general map of the country northwest of lake Superior ;' and for greater exactness, to the series of maps before mentioned of the surveys made by order of the commissioners.

SEC. 19. "*Resolved*, That the following described line (also represented on said maps as before mentioned) is, in the opinion of the commissioners, so far as the same extends, the true boundary intended by the before-mentioned treaties, namely : Beginning at a point in Lac La Pluie, close north of island marked No. 1, lying between the Chaudiere falls of lake Namecan ; thence, down this channel, between the islets marked No. 2 and No. 3 ; thence, down the middle of said channel, into Lac La Pluie, westward of island No. 4 ; thence, through the said lake, close to the south point of island No. 5 ; thence, through the middle of said lake, north of island No. 6, and south of island No. 7 ; thence, through the middle of said lake, to the north of islet No. 8, and south of islands No. 9, No. 10, No. 11, and between islands No. 12 and No. 13 ; thence, south of islands No. 14 and No. 15 ; thence, through the middle of said lake, north of a group of islands, No. 16 ; thence, south of a group of rocks, No. 17 ; thence, south of a group of islets, No. 18 ; thence, north

of an islet, No. 19; thence, through the middle of said lake, to the south of island No. 20, and all its contiguous islets; thence, south of island No. 21, and midway between islands No. 22 and No. 23; thence, southwest of No. 24; thence, north of island No. 25; thence, through the middle of said lake, to its *sortie*, which is the head of the Rivière la Pluie; thence, down the middle of the said river, to the Chaudière falls, having a portage on each side; thence, down the middle of said falls and river, passing close south of islet No. 26; thence, down the middle of said Rivière la Pluie, and passing north of islands No. 27, No. 28, No. 29, and No. 30; thence, down the middle of said river, passing west of island No. 31; thence, east of island No. 32; thence, down the middle of said river, and of the Manitou rapid, and passing south of No. 33; thence, down the middle of said river, and the Longue Sault rapid, north of island No. 34, and south of islets No. 35, No. 36, and No. 37; thence, down the middle of said river, passing south of island No. 38; thence, down the middle of said river, to its entrance between the main land and Great Sand island, into the Lake of the Woods; thence, by a direct line to a point in said lake, one hundred yards east of the most eastern point of island No. 1; thence, northwestward, passing south of islands No. 2 and No. 3; thence, northeastward of island No. 4, and southwestward of islands No. 5 and No. 6; thence, northward of island No. 7, and southward of islands No. 8, No. 9, No. 10, and No. 11; thence, through the middle of the waters of this bay, to the northwest extremity of the same, being the most northwestern point of the Lake of the Woods. And from a monument erected in this bay, on the nearest firm ground to the above northwest extremity of said bay, the courses and distances are as follows, viz: 1st. N., 56° W., 156.5½ feet; 2d. N., 6° W., 861½ feet; 3d. N., 28° W., 615.4 feet; 4th. N., 27° 10' W., 495.4 feet; 5th. N., 5° 10' E., 1,322½ feet; 6th. N., 7° 45' W., 493 feet: the variation being 12° east. The termination of this 6th or last course and distance, being the above said most northwestern point of the Lake of the Woods, as designated by the 7th article of the treaty of Ghent; and being in latitude forty-nine degrees twenty-three minutes and fifty-five seconds north of the equator; and in longitude, ninety-five degrees fourteen minutes and thirty-eight seconds west from the observatory at Greenwich.

SEC. 20. "For the better understanding of many of the arguments and observations which it will become the duty of the commissioners to submit, in their separate reports, to the two Governments, on the subject of their differences, they deem it proper further to state on the journal, that during the verbal discussions between them relative to the course of the boundary, certain propositions were made by each of them for the adoption of lines, different from either of those which they have assumed in the preceding joint declaration.

SEC. 21. "These propositions, which each of the commissioners avers were submitted, on his part, by way of compromise, and under the influence of a strong desire to bring the commission to a speedy and amicable termination, and of a belief that it would be for the interests of both Governments rather to yield such claims as were susceptible of the least doubt, than incur the delay and expense of a reference to a third party, were as follows, namely:

"Mr. Porter (adhering inflexibly to his opinion that the boundary

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ought to be run through the channel which divides St. George's island, in the river St. Mary's, from the British shore, so as to appropriate that island to the United States, inasmuch as the establishment of the line through the American channel, which is much the smallest branch of the river, would have the effect to throw the only navigable communication for lake vessels exclusively within the territory of one of the parties, and thereby violate a principle, the strict observance of which is, in his view, more important to the interests of both Governments than any other consideration connected with the fair adjustment of the boundary, and from which he has never departed) proposed to his colleague that, in regard to their differences respecting the boundary between lake Superior and the Chaudiere falls, in Lac La Pluie, (St. George's island being first appropriated to the United States,) they should both relinquish the lines which they had respectively assumed, and adopt, in lieu thereof, the following route, namely: Beginning at the point in lake Superior described as one hundred yards distant from the island called Cnapeau, near the northeast end of Isle Royale, and, proceeding thence to the mouth of the Pigeon river, on the northwestern shore of the lake, enter and ascend the middle of that river; and, leaving it at its junction with Arrow river, proceed to lake Namecan and Lac La Pluie by the most direct and most continuous water communication, as delineated on the reduced map on the files of this board, to which reference was already made.

SEC. 22. "The British commissioner, on the other hand, still maintaining the claim of Great Britain to St. George's island, and to the establishment of the boundary line through the Middle Neebish and the Sugar rapids, as before set forth, stated to his colleague the necessity of his adherence to the same, as he considered that the application of the same principles which, under the 6th article of the treaty of Ghent, appropriated Burnhart's island, in the St. Lawrence, and the islands at the head of Lake St. Clair, lying between the boundary line as there settled and the American main shore, to the United States, would in this instance require St. George's island to be allotted to Great Britain. Mr. Barclay, however, impressed with the propriety, not only of dividing the doubtful territory between the two Governments, but also of preserving the navigation free to both nations, proposed to stipulate with the American commissioner, upon condition of his agreeing to fix the boundary in the Middle Neebish and Sugar rapids, and to allot St. George's island to Great Britain, that the channel through the East Neebish and lake George should remain free for the fair and lawful commerce of both nations; provided the commissioner of the United States would guaranty the like with respect to the channel running on the southeast side of Burnhart's island, and to that channel through the islands of lake St. Clair, which is contiguous to the American main land, and which is commonly used because it is the easiest and safest.

SEC. 23. "And as to the proposition of Mr. Porter, to conduct the line from lake Superior to the mouth of Pigeon river; thence, through the middle of said river, proceeding to Lac La Pluie by the most direct and continuous water communication: Mr. Barclay consented to adopt a route from lake Superior, by the Grand Portage, to Pigeon river, and thence, by the most easy and direct route, to Lac La Pluie, provided the the American commissioner would consent that the boundary should be

conducted from water to water, over land, through the middle of the old and accustomed portages, in those places where, from falls, rapids, shallows, or any other obstruction, the navigation and access into the interior by water are rendered impracticable. Such a route, with all the portages, is here described by Mr. Barclay, for greater certainty, to wit :

SEC. 24. "From the before-mentioned point in lake Superior, 100 yards from the Chapeau island, till it approach within — yards of Isle aux Moutins, at the southwest end thereof; thence northwestwardly to the southeast end of the Grand Portage on the shore of lake Superior; thence through the middle of the road of the Grand Portage westward to its west end, on the southeast bank of the Pigeon river—being a distance in length of portage of about 14,366 yards, equal to 8 statute miles and 286 yards; thence, up the middle of the said Pigeon river, to the Chute de la Perdrix, having a portage of about 445 yards, on the left or east side; thence, through the said portage, to the said river again; thence, up the middle of said river, to the Rapide aux Outardes, having on the right or east side a portage of about 2,000 yards; through said portage to the south Fowl lake; thence, through the middle of the south Fowl lake, to its river or strait, connecting it with north Fowl lake, and up the middle of the above river or strait, to north Fowl lake; thence, through the middle of this lake, to the mouth of Moose brook; thence, up the middle of this brook, to the Portage de l'Orignac, of about 721 yards, on the right or east side, having the brook on the west; through said portage, to the Lac de l'Orignac; thence, through the middle of this lake, to the great Portage des Cerises, of about 844 yards, on the right or north side, having a brook with falls and rapids on its south side, and through said portage to Lac Vaseux, or pond; thence, through the middle of this lake or pond, to the portage Vaseux, of about 265 yards, on the right or north side, and through said portage to another pond; thence, through the middle of this pond, to the Petit Portage aux Cerises, of about 233 yards, on the right or north side, having a brook on its south side, and through said portage to the Lac à la Montagne; thence, through the middle of this lake, to its west end, and Wattap carrying-place, of about 539 yards, and through said carrying-place into a lake; thence, through the middle of this lake, to a strait; through the middle of this strait to another lake; thence, through the middle of this lake, to its west end and Grand Portage Neuf, of about 2,579 yards; thence, through the middle of the road of this portage, to Rose (or Mud) lake; thence, through the middle of said lake, to the west end and, mouth of a brook, on the left or south side of which is a portage of about 21 yards, and through said portage to a small lake; thence, through the middle of this lake, to its west end, having a carrying-place of about 347 yards (the connecting brook being north of this carrying-place,) and through said portage to the south lake of the Height of Land; thence, through the middle of this lake, to the Height of Land portage, of about 468 yards; thence, through the middle of this portage, to the lake north of the Height of Land; thence, through the middle of this lake, to the entrance of a strait; thence, southwestward through the middle of this strait, to the Lac des Pierres à Fusil; thence, through the middle of this said lake, to its sortie; thence, through its middle and the middle of the following waters, to a fall, having the Portage de la Petite Roche, of about 33 yards, on its right or northeast side; thence, through said portage, to the same

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waters, and following down the said waters to a portage of about 116 yards, on an island, having a channel and falls on each side ; thence, through said portage, and downward through the middle of the waters, to the Portage de Gros Pin, of about 599 yards, on an island having a channel and falls on each side ; thence, through said portage ; thence, northward, following the middle of the small lakes and straits, to a portage of about 119 yards on the left or south side, the rivulet being on the north side ; thence, through said portage ; thence, following the middle of the small lakes and straits, passing east and north of island No. 1, and south of island No. 2, west of islet No. 3, and between islets Nos. 4 and 5 ; thence, south of islet No. 6 ; thence, northward, through the middle of the lakes and straits, passing west of island No. 7 and of island No. 8 ; thence, down the middle of a rapid, and following a river to a fall, having a carrying-place of about 32 yards, on the left or west side ; thence, through said portage ; thence, down the river, between the islets No. 1 and No. 2, into lake Kasiganagah ; thence, through the middle of this said lake, east of island No. 3, northeast of island No. 4, and southwest of islets No. 5, and south of island No. 6 ; thence, southeast and south of island No. 7 and islet No. 8, north of islands No. 9, No. 10, No. 11, and No. 12, south of islands No. 13 and No. 14, west of island No. 12, and east of islet No. 15, west of islet No. 16 and island No. 17, south of island No. 18, of islet No. 19, and islands No. 20 and No. 23, north of islet No. 21, of island No. 22, south of islet No. 21, of islands No. 25 and No. 26, east of islets No. 27, southeast of island No. 28, and south of island No. 29 ; thence, passing through the middle of the said lake, to the carrying-place of about 20 yards, on the north side of a small brook coming from Swamp lake ; thence, through the middle of the said carrying-place and of Swamp lake, passing north of islet No. 1, to the Swamp carrying-place, of about 423 yards ; thence, through the middle of said carrying-place, to the Cypress lake ; thence, through the middle of this lake, passing north of islet No. 1 and of islet No. 2, south of islets No. 3, and east of islet No. 4, to the Portage des Couteaux, of about 47 yards, having a brook and falls on its northeast side, running into Lac des Couteaux ; thence, through the middle of this portage and of the lake last named, south of islets No. 1, to the strait ; thence, through the middle of the said strait ; and thence, through the middle of the said Lac des Couteaux, passing south of islands No. 2, and north of islands No. 3, No. 4, and No. 5, and close north of island No. 6, to the head of the sortie of the lake or river ; thence, down the middle of this river and its rapids, and small lakes or ponds, to a steep rapid, having a portage of about 80 yards, on the left or southeast side, the river being on the northwest side ; thence, through the said portage ; thence, through the middle of a pond, to a carrying-place of about 173 yards, on the left or south side, having the river and falls on its north side ; thence, through said portage ; thence, into Carp lake, and through the south part of this said lake to the Carp carrying-place, of about 378 yards, on the left or south side, the river and falls being on its north side ; thence, through said portage ; thence, into Buck lake, and through the middle of said lake, passing north of islet No. 1, south of islet No. 2, and north of islet No. 3, to and through the Portage du Bois Blanc, of about 196 yards, the river and fall passing westward of it, to Lac du Bois Blanc ; thence, through the middle of the said lake and its straits, passing west of island No. 1, east

of islet No. 2, south of islet No. 3, north of islet No. 4, south of islet No. 5, of islands No. 6 and No. 7, west of islets No. 8 and No. 9, and between island No. 10 and islet No. 11, eastward and northward of islet No. 12, south of islet No. 13, of island No. 14, and islet No. 15, north of island No. 16, and southwest of islet and island No. 17, to the head of a fall, having a portage of about 190 yards on the left or west side; thence, through said carrying-place; thence, down the river, and turning west through the middle of a narrow arm, to and through the Portage du Gros Pin, of about 358 yards, at its west end, having the river and falls north of it; thence, down the said river, west of islet No. 1, and eastward, northward, and southwestward of islands No. 2 and No. 3, to and through a portage of about 166 yards, going south across a point of land; thence, down the river, passing between islets No. 4 and island No. 5, south of island No. 5 and islet No. 6, to and through the Islet portage, of about 33 yards, having a channel and falls on each side; thence, down the river, into Crooked lake; thence, as near as the route permits, through the middle of this said lake and its straits, passing between islets No. 1 and No. 2, and between islets No. 3 and No. 4; thence, between islands No. 5 and No. 6; thence, north of island No. 5, and south and west of island No. 7; thence, west of islet No. 8; thence, between islands No. 9 and No. 10; thence, passing east and north of island No. 11, and east of island No. 12; thence, north of island No. 12, and south of No. 13; thence, east and north of island No. 14, north and west of island No. 15; thence, north of island No. 16, and between island No. 16 and island No. 17, south of island No. 17; thence, between island No. 18 and island No. 19; thence, south of island No. 20, west of island No. 21, and south of islets No. 22, No. 23, No. 24, and No. 25; thence, north of island No. 26, and between islands No. 27 and No. 28; thence, south of island No. 29 and its islets; thence, south of islet No. 30; and thence, to and through the Portage aux Rideaux, of about 183 yards, on the left or south side, having the river and Rideaux falls on its north side; thence, down the middle of the river, to the Iron lake; thence, through the middle of said lake, passing north of islet No. 1, and south of islet No. 2; thence, north and west of island No. 3; thence, south of island No. 4; thence, between island No. 5 and islet No. 6; thence, west of islet No. 7; thence, east of island No. 8, and west of islet No. 9; thence, east of islet No. 10; thence, through the middle of said waters, to the west end, and to and through Portage aux Flacons, of about 448 yards, having a channel of the river running south and west of it, to Lac La Croix, (or Naquakeen;) thence, through the middle of the said Lac La Croix, passing south of a rock marked No. 1; thence, south of an islet, No. 2; thence, passing north of islands No. 3, No. 4, and No. 5; thence, northeast of island No. 6 and islet No. 7, east of islands No. 8, No. 9, and No. 10; thence, passing between islands No. 11 and No. 12; thence, east and north of the great island No. 13, west of island No. 14, south of island No. 15, west of islets No. 16 and islet No. 17, southwest of islets No. 18, west of islet No. 19 and of islets No. 20, east of islet No. 21, south of islet No. 22, south of islet No. 23; thence, south of island No. 24, and north of island No. 25; thence, southwest of island No. 26, north of island No. 27, south of islet No. 28, north and west of island No. 29, west of islet No. 30, east of islet No. 31, north of island No. 32, and south of islets No. 33, No. 34 and No. 35, north of island No. 36

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and its islets, south of islet No. 37, west of islet No. 38, east of islets Nos. 39 and 40, north of island No. 41, south of island No. 42, northeast and north of islands No. 43 and No. 44, south of islands No. 45 and No. 46, north of island No. 47, south of island No. 48, north of islands No. 49 and No. 50, east of island No. 51, west of islands No. 52 and No. 53, west of islet No. 54 ; thence, passing through the middle of the said lake, north and west of islet No. 55, island No. 56, and island No. 59, east of islands No. 57 and No. 58, and east of island No. 60 ; thence, down the middle of the said Lac La Croix, to and through the portage, of about 217 yards, [having, when the lake is high, a brook running from the lake by falls and rapids on its west side ; when the lake is low, this brook is dry,] to the lake of the Loon's Narrow ; thence, through the middle of the said lake, passing west of islands No. 1 and islet No. 2, and north of island No. 3 ; thence, through the middle of said lake, to and through a portage of about 263 yards, on the left or southeast side, having the Loon rivulet and falls on its northwest side ; thence, down the middle of the said rivulet, to and through a portage of about 67 yards, on the left or south side, having the rivulet and fall on the north side ; thence, down the middle of the said rivulet, to its entrance into the Lesser Vermillion lake ; thence, through the middle of this lake, passing east of island No. 1, and southwest of island No. 2 and islet No. 3 ; thence, down through the middle of its sortie or river, to its entrance into the Sand-point lake ; thence, through the middle of this lake, passing east of islet No. 1 and of island No. 2, east of islet No. 3 and island No. 4, and west of island No. 5 ; thence, west of islet No. 6, and east of islets No. 7 and No. 8 ; thence, east of island No. 9, south of island No. 10, north of island No. 11, southwest of island No. 12 and islet No. 13, northeast of island No. 14 ; thence, down the middle of its sortie or river, to its entrance into lake Namekan ; thence, through the middle of the said lake, passing close west of island No. 1 ; thence, westward, passing south of islet No. 2 ; thence, south of island No. 3 and islets No. 4 and No. 5, of islet No. 6 and island No. 7 ; thence, north of islets No. 8, No. 9, and No. 10, and south of island No. 11, north of island No. 12 ; thence, south of islands No. 13, No. 14, and No. 15, and of islet No. 16 ; thence, northerly, passing west of island No. 17, east of islet No. 18, and of island No. 19 and island No. 20 ; thence, passing east of island No. 21, and west of island No. 22 ; thence, east of No. 23, and down the middle of the river, southeast of island No. 24 ; thence, passing north of islands No. 25 and No. 26, and down the middle of the north channel to a fall having a portage of about 127 yards on the left or north side ; thence, through said portage, down the said river, passing north of island No. 1 ; and thence to Lac La Pluie, as already described. The said route being intended to pass through all the portages and decharges (or partial unloadings) named or not named, which are necessary to connect the water communications into the interior."

SEC. 25. Therefore the undersigned, commissioner on the part of his Britannic Majesty, in conformity with the provisions in that behalf of the said treaty concluded at Ghent, now proceeds to make his separate report following, as well to the Government of his Britannic Majesty as to that of the United States of America, stating in detail the points upon which the said commissioners differ, as aforesaid, and the grounds upon which his individual opinion thereon has been formed.

PART II.

SEC. 26. In performing this duty, the undersigned will consider: 1st. The difference in relation to the Neebish channels and rapids. 2d. That which regards the continuation of the boundary line from a point specified near isle Royale, in lake Superior, to lake La Pluie, as described in the joint statement of the said two commissioners, hereinbefore set forth. 3d. An examination will be made of the claims and arguments of the agent of the United States, in behalf of his Government, advanced before the commissioners.

SEC. 27. 1st. Upon the first point, namely, the difference in relation to the Neebish channels and rapids, the undersigned (referring to the maps of the surveys executed under this commission, as certified by the surveyors, and signed by the commissioners) observes, that in this section of the water communication, (namely, the Neebish channels,) through which the boundary line must pass, in conformity to the treaties of 1783 and of 1814, there are two principal islands. The northern one is generally known as isle St. George, and is so described on the maps. The southern one has been designated by the commissioners as St. Tammany's island,* in compliment to the United States, to whose portion this island was without controversy to be allotted. The three channels formed by these islands and by the adjacent main shores are designated as the Eastern Neebish, the Middle Neebish, and the Western Neebish.

SEC. 28. These channels have all of them their rapids. The Western Neebish channel is so shallow as to be suited only to the navigation of canoes and small boats. The Middle Neebish is of good depth, except at some particular points, where, by means of shoals or of rocks, the navigation is rendered unfit for the larger trading vessels of the lakes: it is sufficient, however, for large and deep boats, and is more used than either of the other channels. The Eastern Neebish alone is adapted for the navigation of the larger classes of trading vessels employed in these regions, between lake Huron and the Sault de Ste. Marie, which last-named place is about three miles above (that is, to the north of) the head and junction of these several channels, and is distant about fourteen miles from lake Superior. At this point the Sault de Ste. Marie causes an interruption of the navigation, and a discharge of the cargoes of vessels is required, when designed for the countries lying farther westward, for the purpose of transporting them, either over land or by boats through a canal, to a part of the river St. Mary just above the said Sault, where they may be reshipped for lake Superior. The transportation required on the British side of the Sault, by land, is about half a mile. There was formerly a canal on the same side, but it is not now used; on the American shore there is at present a canal, and it is believed that transportation by land is there seldom resorted to.

SEC. 29. According to two rules of decision, practically adopted by the commissioners in determining the boundary under the 6th article, there would exist a claim, in behalf of his Majesty, that St. George's island should be allotted to Great Britain. 1st. Because, by one of those rules, the islands intersected by a middle line (measured equidistant be-

* The Indian saint of the New England States.

tween the main shores) were to be apportioned in quantity (of extent) as equally as possible between the two nations, according to the proportions falling on the respective sides of such equidistant line. 2d. Because, wherever an island was intersected by such a middle line into two unequal parts, (which is generally the case when any was intersected,) the nation on whose side the larger portion lay was entitled to the election to retain the whole, (or, at the desire of the other party, might exchange its portion for an equivalent to be received elsewhere,) and the line was to be settled accordingly. It is to be observed, however, that, when the one party received an appropriation of any island thus intersected, the other party had credit given for the portion thus surrendered, which lay on its side of the equidistant line; and this credit was to be adjusted in the future appropriation of islands so intersected. No island was to be severed. In conformity with these and other principles then adopted, the boundary line was to be so conducted as to cast the several islands, respectively, to that side of the said boundary line which was contiguous to the main shore of the Government to which they were adjudged.

SEC. 30. The undersigned has stated that these rules were *practically* adopted; for it is admitted that the American commissioner did *in terms* decline establishing the rules above specified as principles for governing the decision required; yet he afterwards fully adopted them in *practice*. And the undersigned leaves it to others to conjecture, (if there be any doubt,) or to the American commissioner to explain, the motives for this conduct.

SEC. 31. According to both these rules of decision, the undersigned asserts the right of his Britannic Majesty to be clear, equitable, and just, that St. George's island, the only subject here in controversy, should be allotted to Great Britain, and that, consequently, the boundary should be established in the Middle Neebish: for the St. Tammany island is intersected by an equidistant middle line, leaving far the greater portion on the American side thereof. To prove that it is so intersected, the undersigned refers to the affidavit of David Thompson, Esq., one of the astronomers and principal surveyors employed by the commissioners, set forth in the appendix to this report under the letter A, wherein the following evidence will be found: "St. Tammany's island, next to St. George's island, in the Neebish channel, would be intersected by a line equidistant from the nearest opposite main shores." This island the commissioner of the United States never thought of surrendering. He was entitled to it on the principles set forth, in consequence of the greater part of it falling (as just stated) on the American side of the equidistant line. (And here the undersigned asserts that the commissioner of the United States, in his conferences respecting the line, always demanded of the undersigned the application of the rules hereinbefore set forth, where they were favorable to the American interest.) This title was not controverted, but the undersigned was always willing to allow it; and, consequently, while the United States were to receive the intersected island of St. Tammany, the undersigned urged the claim of Great Britain to the intersected island of St. George, under the first rule above set forth, as the only subject in which compensation could be received for her portion of St. Tammany to be surrendered, and by which any approximation towards equality could be effected. Under the sec-

ond rule above stated, as by far the larger part of St. George's island falls on the British side of an equidistant line, the undersigned felt himself entitled and constrained to insist upon the right of his Britannic Majesty to that island, even independently of the consideration of the questions of equalization and compensation suggested by the unopposed claim of the United States to St. Tammany's island.

SEC. 32. In relation to the two rules of decision just referred to, the undersigned will indulge two questions: 1st. Whether such rules were or were not adopted by the commissioners in the execution of their duties under the 6th article of the treaty of Ghent? 2d. Whether, in case of their previous adoption under the 6th article, they should be introduced as applicable to the 7th article, now under discussion? Upon the answers to be given to these queries must depend the success of the claim which the undersigned has had the honor of supporting, and now maintains, in behalf of his Majesty.

SEC. 33. In replying to the first question, whether such rules were or were not adopted by the commissioners in their deliberations and decisions under the 6th article of the treaty of Ghent, the undersigned will not depend upon any assertions purely his own. He relies upon an accumulation of evidence. First, another affidavit of Mr. Astronomer Thompson is to be adduced. By an order of the board, passed at the meeting held at Albany, on the 2d day of November, 1825, it was determined "that such written documents as the agents of the respective Governments intend to submit as evidence in support of their claims, [excepting the maps of the surveyors in the employ of this commission,] be first duly authenticated, agreeably to the forms and usage of the country in which the same are procured."

SEC. 34. The affidavit of Mr. Thompson, just alluded to, and about to be directly introduced, (as well as that before referred to under letter A,) was, "*ex majori cautela*," duly and formally taken, according to law, before F. Fairlie, Esq., of the city of New York, a commissioner appointed to take affidavits; although this formality was required, by the order of the board above recited, only in case of written evidence to be submitted by the agents of the respective Governments, who were not sworn to impartiality as the commissioners are. It may here be remarked that similar formalities were used with respect to the affidavit A, before noticed, by Mr. Astronomer Thompson. A copy of the affidavit here mentioned, marked B, certified by one of the secretaries of the board, is set forth in the appendix to this report. The undersigned begs leave here to introduce an extract of such part of it as applies to the point now in agitation, as follows:

SEC. 35. "I hereby certify that, for a boundary line under the 6th article of the treaty of Ghent, the United States commissioner resorted to a line as near as possible equidistant from the opposite main shores; and wherever this line intersected an island, the island was considered as belonging to the side on which the greater portion of it lay. That St. George's island, intersected by a middle line as near as possible equidistant from the opposite main shores, has its greatest part on the British side of this said line."

SEC. 36. Here may be introduced another extract from Mr. Astronomer Thompson's affidavit A, before referred to, in section 31, to show that the second principle mentioned, (sec. 29,) for the regulating of the

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commissioners in establishing of the boundary, was actually adopted by them. The affidavit states as follows: "That he [Mr. Thompson] calculated for the commissioners the contents of the area of the several islands, under the 6th article of the treaty of Ghent, which would have been intersected by a line equidistant from the opposite main shores, in order that the party receiving the appropriation of such islands entire might give credit to the other party for the portion it surrendered, which would have fallen on its side of such middle line, and in order that each party might receive of the undivided islands in proportion to the shares they would respectively have been entitled to in case the islands had been divided by a middle line."

SEC. 37. From the first of the above extracts, taken from the affidavit B of Mr. Surveyor Thompson, the undersigned alleges that two facts are substantiated favorable to the claim of his Britannic Majesty to St. George's island :

1st. That to determine the boundary under the 6th article, a middle line equidistant between the respective main shores always was resorted to, and that islands intersected by such a line were "considered as belonging to the side on which the greater portion of them lay "

2d. That St. George's island is intersected by such a line, and that "it has its greatest part on the British side of the said line."

SEC. 38. Lest it may be asked how Mr. Surveyor Thompson should know and be able to declare that the commissioners "resorted to a line as near as possible equidistant from the opposite main shores; and wherever this line intersected an island, the island was considered as belonging to the side on which the greatest portion of it lay;" the undersigned affirms that Mr. Thompson was the person who was desired to attend the commissioners for the purpose of drawing the boundary line on the maps; that he drew an equidistant middle line on a full set of the maps, exhibiting the entire boundary under the 6th article of the treaty; that he did it by the particular oral direction of the American commissioner, the undersigned being present, but designedly abstaining from interference.

SEC. 39. Secondly. In corroboration of this evidence, is the inference to be deduced from another rule for regulating the decision of the commissioners in regard to the boundary, proposed by the commissioner of the United States, as admitted by him in correspondence. This rule has already been hinted at in the 29th section of this report, and is to this effect: "That, in fixing the boundary line, the commissioners would never divide an island."

SEC. 40. The inference from this rule, which was agreed to by the undersigned, as proposed by the American commissioner, and to which full effect was afterwards given in all cases, is twofold: 1st. That the American commissioner, when he proposed the same, could have entertained no intention of adhering to a channel boundary; for by such a boundary it would be impossible to divide an island, and, consequently, the rule would be useless. 2d. That, as some other middle line than the middle of a channel was contemplated, and as no other middle of a river or other water communication has ever been suggested, than either the middle of the channel, or the middle equidistant from the respective main shores, the former of which appears to be excluded by this very rule, the inference is, that such equidistant middle line was here medi-

tated, and that this rule was designed to provide against the arbitrary effect of such a line in regard to the islands which might thereby be intersected and divided in jurisdiction.

SEC. 41. The undersigned humbly submits that this rule, having been proposed by the American commissioner, is conclusive upon him as respects the two inferences above deduced. The undersigned refrains from adducing proof of this rule having proceeded from the commissioner of the United States, because that gentleman has hitherto freely claimed it as his offspring, and it is believed he will not abandon it in his report.

SEC. 42. Thirdly. After the affidavit of Mr. Astronomer Thompson, and the circumstantial evidence already adduced, it is confidently believed that it will satisfactorily and conclusively appear, from an examination of the certified maps of the commissioners containing the actual surveys made by their orders, and a demarcation of the boundary line as settled by them, that for the true middle of the rivers, lakes, and water communications, through and at which the boundary line was required to be established, a line equidistant from the main shores was assumed as intended by the treaties, that line being conducted to one side of any such islands as would be intersected by it, if its equidistant course were there continued, so as to cast them on that side on which the larger intersected portion would lie. There was, under the 6th article of the treaty, one solitary case in which the American commissioner refused to abide by the two rules first set forth: that was in the case of three very small islands, called Sugar, Fox, and Strong islands, in front of Amherstburgh, in Detroit river. These would, according to an equidistant middle line, belong to Great Britain. But, as the American commissioner was not to be prevailed upon, the case was submitted to his Majesty's Government, who directed the undersigned to surrender them to the United States, rather than to break off the amicable negotiations on foot between the commissioners, and, for an object of such small importance to either Government, to incur the great expense and delay which would result from any reference to a third Power. In communicating to the American commissioner this additional mark of the friendly disposition of his Majesty's Government towards that of the United States, the undersigned stated "that he wishes it to be clearly understood that he did not thereby depart from any of the principles which, as his Majesty's commissioner, he had asserted, and which formed the general practical basis of the arrangement, so far as the said boundary line has been agreed upon." The note of the undersigned, from which the above is an extract, is set forth at length in the appendix to this report, under the letter C, as copied from the journal of the commissioners for the 18th of June, 1822.

SEC. 43. In addition to this case, in which alone the American commissioner objected, there may be one or two other instances under the 6th article wherein islands which would have been intersected by an equidistant middle line, so as to throw a large portion on one side, were yet allotted to the other side, and where the boundary line was conducted accordingly. This was done where a party required territory to make up its amount of intersected islands in which there may previously have been produced a deficiency, in consequence of the other

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party having received a whole island or whole islands, by reason of the greater part thereof happening on its side of the equidistant line.

SEC. 44. These cases form the only exceptions to the general operation of the rules set forth in the whole volume of the maps, exhibiting this entire and most extensive boundary under the 6th article.

SEC. 45. As the last evidence to show that a middle line equidistant from the respective main shores was adopted by the commissioners, in determining the boundary under the 6th article, the undersigned will now refer to the journal of the board for the 18th day of June, 1822, where the decision of the commissioners is recited, and is signed by them. In all parts of this instrument, with the exceptions already specified, the boundary is described "through the middle" of the rivers, lakes, &c.; and, on reference to the maps, that middle will be found (from the boundary there marked) to be delineated equidistant from the main shores. The undersigned is aware that the commissioner of the United States denies that he ever assented to establish the boundary line under the 6th article upon such principles. If the joint report describing such a line, and referring to the maps upon which it is so delineated, both of which are signed by the commissioners, be not an express assent to such a line, the undersigned has been laboring under a great disadvantage in his intercourse with the American commissioner, from not having been informed by him at an earlier period what he would consider the essentials of an *express agreement*. If there were no maps to exhibit what that middle is which was thus designed, it might be pretended that the middle of the channels was intended, or something different (for the sake of preserving an appearance of consistency) from a line equidistant from the main shores. But, by a comparison of the document here alluded to, (namely, the decision upon the boundary under the 6th article, as set forth in the journal,) with the maps of the commission, it will be perceived, beyond the possibility of denial or evasion, that the middle thus agreed upon was such an equidistant middle. As the undersigned is perfectly informed that the American commissioner has also formally denied that he ever assented to such a line, so he is entirely ignorant how that commissioner is about to make it so appear. The undersigned, therefore, without any personal allegations on his part, leaves this evidence as it is on record, without comment, in the hands of the commissioner of the United States and of those to whom it shall be committed.

SEC. 46. Secondly. As to the second question proposed, viz: Whether, in case the rules stated to have been adopted were actually adopted under the 6th article, they should be introduced as applicable under the 7th article. The undersigned humbly begs leave to assert the affirmative.

SEC. 47. The circumstances of the boundary comprehended by these articles are so precisely similar, that it is difficult to imagine a ground of objection to the placing of them under the influence and direction of the same rules. Indeed, so decidedly alike are the two cases, that, in the discussion of the latter, and in the desire to exclude the operation of a middle line equidistant from the main shores, neither the American agent in his argument before the board, nor the American commissioner in his conferences with the undersigned, ventured to suggest a difference. In both cases the parties were the *same*, the boundary was directed by the *same* treaty to be established by the *same* commissioners, (as it were to

secure the decision of the *same* rules, it was to be established throughout the *same* chain of water communication, and "through the middle" of it.

SEC. 48. To assert that the same rules are not to govern in both articles, is to admit that either party may change its position when the change may suit its convenience; that having gained what it could by the application of certain principles in certain parts, it may abandon those principles when they begin, in turn, to operate advantageously to the other party. Such, in fact, has been the case. The rules above specified, in their application to the boundary line under the 6th article of the treaty of Ghent, procured a great advantage to the United States. The principle of a channel forming the boundary was altogether disregarded in the establishment of the line. Thus the upper Long Sault island, the lower Long Sault island, and Barnhart's island, were allotted to the United States, in consequence of their lying principally on the American side of an equidistant middle line; while the main channel, and the only channel susceptible of navigation, in descending the river Iroquois along those islands, lies exclusively between them and the American main shore. The same may be said of the boundary line passing through the islands at the head of lake St. Clair. It is conducted through the channel, which passes as nearly as possible equidistant from the respective main shores; thus apportioning to the United States one half of the islands: whereas the channel always employed by the large vessels of these waters lies immediately contiguous to the American main shore. In both these cases, if respect were to be had to a channel, all the islands specified, as well in the Long Sault as in lake St. Clair, should have been allotted to Great Britain; but the contrary having been the case, the undersigned contends that his Britannic Majesty's commissioner, having thus far faithfully and liberally allowed full effect to the principles mentioned, while they were beneficial to the United States and prejudicial to his Majesty's interest, in so many, such important, and so extensive instances, from a motive of good faith, of moral consistency, and of that impartiality to which the commissioners were sworn, the same cannot with any honesty or good faith be restrained when, in this single instance, and in so limited a manner, they favor the rights and interest of his Britannic Majesty. What is justice, but the application of the same laws to the rights of all parties? What stronger claim can exist for the strict exercise of a principle of equity than that "*in consimili casu*," and "*partibus mutatis*," the principle insisted upon was beneficially applied for the other party? And, resting here, the undersigned would humbly insist that, setting aside the entire question whether the United States commissioner ever *agreed* to adopt the principles suggested above, yet, as it appears from the testimony of Mr. Thompson, from the several statements of the undersigned, and as may be seen more fully, clearly, and incontrovertibly, from the boundary line exhibited on the maps, and from the decision of the commissioners, that channels were disregarded, and that Great Britain was thereby, and by the introduction of an equidistant middle line, greatly the loser under the 6th article of the treaty, that Government has every right and claim to the full exercise of the same principles where they can operate to her advantage, for the purpose of affording her compensation for the liberal application of the same in the case of her competitor. The only instance in which Great Britain can receive any advantage from these principles is in St. George's island; and the undersigned conceives, without ap-

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prehending a dissentient opinion, that this will be deemed but a slender equivalent for the islands of lake St. Clair, and for the upper Long Sault island, the lower Long Sault island, and Barnhart's island.

SEC. 49 It may here be objected, in behalf of the United States, that the cession of St. George's island to Great Britain would leave the ship channel entirely within the British territory. True; but the cession of half the islands at the head of lake St. Clair, and of the upper Long Sault, the lower Long Sault, and Barnhart's islands, placed the channels along them, respectively, entirely within the United States territory. To avoid this objection on the part of the commissioner of the United States, the undersigned made to him the following proposition, viz: That, upon his assenting to establish the line through the Middle Neebish and the Sugar rapids, and to allot St. George's island to Great Britain, in conformity with the principles set forth by the undersigned, as uniformly acted upon by these commissioners, the undersigned would stipulate that the Eastern Neebish should remain free for the fair and lawful commerce of both nations, provided the same stipulation should be simultaneously made on his part in respect to the channel south of Barnhart's island, and of the two Long Sault islands, and to the channel (contiguous to the American main shore) which connects the river St. Clair with lake St. Clair.

SEC. 50. The undersigned proceeded to make the above specified proposition with the less hesitation, and the less doubt of its being favorably received, because formerly the American commissioner, in his conferences for the adjustment of the boundary under the 6th article, voluntarily proposed to the undersigned to declare, in writing, that the existing appropriations of the islands in the Long Sault were made upon the ground and understanding that the several channels were common to the use of both nations. This suggestion was at that time declined by the undersigned, for the reason that, as those channels were considered to be already free to the use of both Governments, by the law of nations, it was superfluous that the commissioners should declare them to be so. A settlement of this point has since become desirable, in consequence of the apprehension of collision from the differing interests and various sentiments of the people of the two Governments; some of the inhabitants of the State of New York, especially, having petitioned the Government at Washington to impose transit duties upon all British property passing Barnhart's island. This proposition made by the undersigned was not accepted by the commissioner of the United States.

SEC. 51. Such being the case, the undersigned alleges that, instead of its forming an objection to the allotting of St. George's island to Great Britain, thereby the main channel would be thrown entirely within the British territory, and constitutes the strongest ground why it should be so appropriated, under the parallel state of this case with that of Barnhart's island and the Long Sault channel, in order that such interruption of the British navigation, on the part of the United States, as has been already sought for and threatened by some of the citizens thereof, may be held in check by putting in possession of the British Government an opportunity to retaliate. There is no other mode of equalizing and securing the rights assigned to both parties under this commission, and there is no other method of making compensation to Great Britain for the frank exercise of a principle towards her rival, which she expected that good faith would as cheerfully exercise towards her in turn.

SEC. 52. But why should the undersigned be laboring to show, by arguments, that the rules he has set forth and declared to have been exercised by the commissioners, in the determination of the boundary under the 6th article, should be applied to the establishing of the boundary under the 7th article, when he can exhibit, by direct proof, without argument, that the American commissioner *actually* consented to the application of these rules to the settlement of the boundary line under the 7th article, in all parts where the said commissioners were, by their agreement, able to fix and decide it? And as it has been stated and proved by the undersigned that there was but one case under the 6th article in which the commissioner of the United States objected to the establishment of the line equidistant from the respective main shores, (that was in regard to the Detroit river, opposite to Sugar, Fox, and Strong islands,) so likewise, under the 7th article, there exists but one solitary case in which the American commissioner has objected to establish the boundary in the middle, equidistant from the main shores, in conformity with the rules set forth; and that is the instance in controversy, of the Neebish channels, whereby the right to St. George's island is involved. From the termination of this controverted section, at the junction of the several channels above the Sugar rapids, through all the remainder of the course of the water communication through which the line is to be fixed, until it approaches its termination at the most northwestern point of the Lake of the Woods, the American commissioner made no objection on the score of the operation of the rules alluded to, but allowed the surveyors to mark upon the maps a line equidistant between the respective main shores, in order to ascertain how the islands were to be allotted, according to the manner of their intersection, and how the boundary should be described. Thus, wherever there appeared no ground of objection (on the part of the United States) from interest—as from the Sugar rapids, up the river St. Mary, through the principal part of lake Superior, and excepting only that portion of said lake in which the treaty requires the line to be fixed “north of isles Royale and Philipeaux,” then, (omitting the next section of the contemplated boundary, which forms the second point of difference between the commissioners,) from lake Namecan, through Lac La Pluie, the river La Pluie, and the Lake of the Woods, until it became necessary to turn aside to attain the said most northwestern point thereof, at which the boundary under the 7th article is required to terminate, *i. e.* through all the parts in which the commissioners have agreed, the middle line was first marked, throughout, equidistant from the respective main shores; where it did not intersect islands—such line was established as the boundary; and where it intersected islands, its course was altered, and so conducted to one side of them as to allot them, respectively, to the Government on whose side of the equidistant line the greater portion was found: thus complying fully with the rules set forth.

SEC. 53. The proof in support of these allegations is the same as was adduced to prove the application of the same rules under the 6th article, namely, the testimony of Astronomer Thompson; the declaration of the commissioners descriptive of the boundary line; and the maps exhibiting that line, as actually delineated and certified.

SEC. 54. 1st. Mr. Thompson, upon this point, swears, in his affidavit marked A, set forth at length in the appendix, “That the boundary line

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under the 7th article was by him (the deponent) measured and delineated upon the said maps, as near as possible equidistant from the respective main shores, by the directions of the commissioners, as far as they agreed, except where islands intervened; and also excepting that part of lake Superior where the treaty requires the boundary to be conducted north of the isle Royale."

SEC. 55. 2d. The declaration of the commissioners descriptive of the boundary line, contained in the journal of their proceedings for the 23d of October, 1826, and already recited in the 14th to the 24th sections of this report.

The first resolution, describing the first portion of the boundary agreed upon and decided under the 7th article, commences: "Beginning at a point in the middle of St. Mary's river," &c.; "thence, westwardly, through the middle of said river," &c.; "thence, through the middle of said river, between points Iroquois and Gros Cap, which are situated on the opposite main shores;" and in the same manner, throughout, as far as was agreed upon and settled. Here the undersigned would refer to the last terms above quoted, to wit: "through the middle of said river, between points Iroquois and Gros Cap, which are situated on the opposite main shores," as conclusively fixing the kind of middle intended by the two commissioners; that is, a "middle between two points upon the opposite main shores," which can be no other than a line equidistant between the respective main shores.

SEC. 56. 3d. The certified maps, exhibiting the boundary line as established by the commissioners, will show that the line was fixed equidistant from the respective main shores, except where islands intervening required a departure, in order to comply with another rule set forth, "that islands should not be severed." The fact here in question will particularly appear from the great proximity of the boundary line to the Rocky islands contiguous to the (British) Canada shore at the *Saint de Ste. Marie*, where the whole of the great channel is left upon the American side of the line in consequence of the position, equidistant from the respective main shores, which was given to that line; also, from the nice measurement of the equidistant line through the southeastern part of lake Superior, by means of which Caribou island was allotted to Great Britain. Other instances might be specified, but it appears superfluous to multiply them.

SEC. 57. The undersigned would close this part of his report by briefly recapitulating and urging, with humility, yet with no little confidence, that whatever may have been the motives which actuated the commissioners in their deliberations under the 6th article of the treaty of Ghent, and whatever may have been the rules by which their decision was formed in relation to that boundary in general, whether they were convenient or otherwise, the same ought to govern them in the present boundary under the 7th article, in every portion thereof, particularly in the Neebish channels, as it has been shown that, in all other parts which have been agreed upon, they were allowed to influence them. To this are the said commissioners required, it has been herein hinted, by the following principles: 1st. For the preservation of the right which exists in both parties to a fair distribution of the respective shares of certain islands contiguous to the boundary line. 2d. From the principle of justice, which requires the equal application of the same laws in like cases,

to all parties. 3d. As a check upon the United States, that what has been granted them in the possession of the Long Sault channel, near Barnhart's Island, shall not be misapplied to the injury of Great Britain. 4th. To equalize the relative condition of the boundary between the parties, which is as much exacted by justice as is the distribution of the islands and of the water. 5th. From moral consistency and national good faith. The undersigned avers that he gave his assent to the adjustment of the boundary line, as established under the 6th article of the treaty of Ghent, only under the confident expectation that the line under the 7th article would be determined according to the same rules; that this expectation induced the surrender (by means of the introduction of those rules) of much valuable territory to the United States; that the undersigned even then entertained the anticipation, which he at that time also expressed to the American commissioner, that the application of those rules would allot St. George's island to Great Britain; which opinion is confirmed by the surveys subsequently made under the direction of the commissioners, by the personal observation of the undersigned, and by the testimony of other persons, especially by that of Mr. Astronomer Thompson, set forth in his affidavit contained in the appendix, under letter B; that the commissioner of the United States ought, in candor, to have communicated his determination not to be governed by an equidistant middle line under the 7th article, at the time the anticipation of the undersigned, just above mentioned, was made known to him, in order that the undersigned might not be deceived by false hopes; that the same rules *were* applied also to all parts of the boundary line under the 7th article, which have been decided. These facts having been made incontrovertibly to appear, the undersigned cannot for a moment allow himself to believe that the friendly sovereign or state, to whom these differences are to be referred for decision, will permit the United States to insult the virtue of national good faith, that only law between empires, by granting their claim to that which they have virtually pledged to another.

———"Famam extendere factis
Hoc virtutis opus."

PART III.

SEC. 58. The preceding remarks have been made upon the ground that certain principles had been generally applied by the commissioners under the 6th and 7th articles of the treaty of Ghent, to the settlement of other parts of the boundary, and that the same ought in justice to be applied to that portion which embraces the Neebish rapids. Thus much for the equity of the case.

SEC. 59. The undersigned will now endeavor to show that, whether such rules were practically adopted or not, a line equidistant from the respective main shores is that middle which was truly intended by the several treaties describing this boundary, and that it corresponds with the law of nations in this behalf: allowing, however, (what both commissioners state they had agreed to,) that islands should not be severed by the boundary line.

SEC. 60. The undersigned is of opinion that the "doubts" mentioned in the 6th article of the treaty of Ghent, "as to what was the *middle* of the said river, lakes, and water communications, and whether certain

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islands lying in the same were within the dominions of his Britannic Majesty, or of the United States," did not exist as to the interpretation of those terms, but as to the *situation* of the "middle of the said river, lakes, and water communications," in reference to the islands mentioned and to the main shores. The relative distances of the opposite main lands and of the several islands, reciprocally, being unknown, for want of any authorized and accurate surveys, and therefore in doubt, the course which a line equidistant from such main lands, through the "middle of the river, lakes, and water communications" should pursue, both in relation to such islands, and to its distance from the respective main shores, was also unknown; and, in consequence thereof, "doubts have arisen." This explanation is confirmed by the very words of the treaty. They do not state that doubts have arisen as to what was meant by the middle of the rivers, &c., but "doubts have arisen as to what *was* the middle," &c. The extent of the rivers, lakes, and water communications, and the relative distances of the opposite main shores, were unknown at the period of the forming of the aforesaid treaty of 1783, because no actual and accurate survey thereof had ever been made; consequently, the middle of the said rivers, lakes, and water communications, was likewise unknown and doubtful. "In order, therefore, finally to decide these doubts," they were "referred to two commissioners," who were authorized "to employ such surveyors or other persons as they shall judge necessary," and to "make a map of said boundary;" that, by an accurate survey, the precise extent and distances before noticed might be ascertained; that they, together with the line to be designated, might be plainly exhibited on such map; and that so the commissioners might decide upon the doubts thus entertained, and to them referred for determination. The treaty makes mention of *doubts which have arisen*, not as to an expression, but as to a fact, namely, the fact "what was the middle of said river, lakes, and water communications." In support, if any be required, of this construction of the terms of the treaty, and to evince that there is an allowed and generally received and well-understood signification attached to the expression "the middle of the river," &c., the undersigned would refer to Vattel on the Law of Nations, b. 1, c. 22, s. 260—3. "If neither the one nor the other of the two nations near the river can prove that it settled first in those countries, it is to be supposed that they both came there at the same time, since neither of them can give any reason of preference; and, in this case, the dominion of each will be extended to the middle of the river."

To show what Vattel means by "the middle of the river," as above quoted, the undersigned refers to s. 274 of the same book and chapter, where he employs the same words in respect to lakes. "If," says he, "this lake is situated between two states, it is presumed to be divided between them at the middle, while there is no title, no constant and manifest custom, to determine otherwise." Now, it can hardly be contended that, by a middle of a lake, a channel is intended, where all is deep and safe, and navigable, from shore to shore, for tens or for hundreds of miles. Where would the *channel* of lake Ontario, of Erie, of Huron, of Superior, be found? waters all to be divided by a boundary line "through the middle" thereof, by the very commission which this report originates, and to which it refers. They might be one hundred, or two hundred, or three hundred miles in breadth, according to the direction

of the intended navigation. As well may a channel of the Black and Caspian seas, or of the Mediterranean, nay, even of the Atlantic ocean, be sought for. The true and only reasonable interpretation is this: the terms, used in reference to lakes, can apply only to the equidistant line between the shores, for they cannot be said to have channels; and the same words applied without modification to rivers must bear the same construction, namely, the equidistant line between the banks of the river.

SEC. 61. There is one farther passage in Vattel (b. 1, c. 22, s. 269,) which conclusively explains his understanding of the term "middle." "If it," says he, (that is, the river,) "be divided in the middle, between the persons on each bank, that middle, though it change its place, will continue to be the line of separation between the two neighbors." Here the writer explains the term "middle," by the expression "between the persons on each bank;" and this can be no other than a line equidistant from the two banks.

SEC. 62. To the same effect writes Von Marten, in his Law of Nations, (b. 4, c. 4, s. 3.) "Besides," says he, "a nation may be understood as lawfully occupying the rivers on its frontiers, even to the opposite banks. But if these banks are occupied by another nation, and if it be impossible to determine which of the two nations has had the prior possession, each, in that case, having equal pretensions, it ought to be presumed that both took possession at the same moment; and, consequently, that they met in the middle. Every nation, then, has a right to property and dominion as far as the middle of all the lakes and rivers that are situated on its frontiers; at least till the contrary has been proved, or till another division has been agreed on."

SEC. 63. Besides the obvious assertions and conclusions of Von Marten, as expressed by himself, and contained in the preceding passage, the undersigned would particularize that paragraph which remarks that "it ought to be presumed that both" (the two nations supposed) "took possession" (of the banks) "at the same moment, and consequently that they met in the middle." What can be more distinct and free from ambiguity than this manner which the author has employed to signify and explain what he intends by "the middle of the rivers and lakes?" He supposes the parties to arrive *simultaneously* at the banks of the waters, and, proceeding to extend their discovery and possession, advancing "*pari passu*" to meet in the middle. This middle surely has no reference to channels, nor to any other accidents or circumstances than a middle equidistant from shore to shore.

SEC. 64. The undersigned will add but one more authority from writers on the law of nations, to establish his interpretation of what is to be understood by the middle of rivers and lakes: "Arcifinium imperium, ita dictum est," (says Grotius, edition London, 1718, Annotationibus et Commentaries illustrata, l. 11, c. 3, s. 8,) "quod fines habet arcendis hostibus, idoneos, i. e. naturales, flumina, montes, mare; eo animo, populus imperium occupasse primitus creditur, ut flumen, sua medietate diriment eos, tanquam naturalis terminus." The undersigned proceeds with another part of the same section of Grotius, as he intends to employ it for another argument in support of the former part thereof. "Sicut, si flumen exaruisset, imperii terminus maneret medietas alvei qui proximè fuisset; ita, mutato alveo, idem observandum erit." The

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learned commentator, upon the paragraph just above quoted, remarks: "*Enim vero frequentius est et magis congruam, et agri ad flumen utrinque pertingentes sint arcifinii, atque adeo fines. Territoriorum in medio fluminis intelliguntur. Nam flumen et sine obscuritate fines ostendit, et simul naturale munimentum regioni pretendit.*"

SEC. 65. Now, it is almost too palpable to require remark, that, should a channel be adopted as a boundary, both the objects of an arcifinious line, as always intended to be secured thereby, and as mentioned by Grotius, and by his commentator, namely, a boundary free from obscurity, and affording a natural muniment to the adjacent shores, might—nay, the undersigned asserts that, in the line now to be established, they positively would—be lost. For the channels of rivers being always concealed by the superincumbent water, and being moreover subject to frequent and uncertain mutations, no clearness or certainty can exist as to the precise situation thereof; and no eye can possibly detect them so as to be able to define, at a view, the extent of jurisdiction of the respective parties, which is often called in question by hurried acts, depending solely upon ocular evidence and conjecture of distance for determination. Thus, also, with regard to the natural muniment intended by establishing rivers and other waters as boundaries; the desired advantage of security intended for both parties would, in many instances, be lost entirely to one of the parties, from the permanent course of a channel being contiguous to one bank and remote from the other, which would increase to one party and diminish to the other the protection which is the object of such a natural boundary; or, as in the former case of the uncertainty of the line, from the changing of the channel, such muniment would be also uncertain, and probably the source of perpetual controversy. On the other hand, if the middle line equidistant "*de ripa in ripam*" should be established as a boundary, such line would be fixed as remote as possible, and at equal distances from the respective main shores; it would thus afford that very muniment which is the direct intention of a water or arcifinious boundary; and, at the same time, it would be reduced to sufficient certainty, being established by distance defined by, and subject to, ocular demonstration.

SEC. 66. The commentator's note upon the above words of Grotius may be well introduced, in farther explanation of what is meant by the middle of a river. In the commentary to s. 8, l. 2, it is observed, "*terminos voluerint esse in medio fluminis; ita ut dimidium ad hunc, dimidium ad alterum, pertinent.*" Can it be conceived practicable to divide a river in the middle, so that one half shall belong to one and the other half to the other nation, according to the terms and intention of the author, except by dividing it "through the middle" (as the treaty expresses it) by a line equidistant from the respective main shores; for, as Grotius observes in the same section, "*flumen, etiam qua determinat, imperia, non consideratur nude quæ aqua; sed quæ tali fluens alveo talibusque ripis inclusa;*" as is always considered in the common law, not the quantity of water but the quantity of land (so many acres) covered with water. The same interpretation is supported by the same learned commentator, in his annotation to s. 10, c. 2, l. 2, of Grotius: "*quem ad modum enim alveus est pars terræ, quæ ab utraque parte fluminis est, et proinde in ditione et potestate ejusque populi. Sic flumen quod eo alveo continetur, ad eandem ditionem pertinet.*" Here the

undersigned would beg also to remark the construction given to the term "alveus," synonymous with the expression "bed of the river," and with the word *channel* as generally used, when no specific reference is made to depth of water. The commentator says: "Alveus est pars terræ quæ ab utraque parte fluminis est." Thus, it is not intended to designate the deep channel for navigation, and for the passage of ships, but the channel and passage for water; the substratum of the whole watercourse; the whole bed of earths (the bed of the river) over which the water flows; the land from one bank to the other, which is overflowed by the river. The "medietas alver," employed by the Latin writers on the law of nations, signifies precisely the same as the middle of the river, of the superficies, or of the substratum thereof; a line equidistant from the main shores. Thus, upon any construction of the terms "the middle of the river, lakes, and water communications," such middle should be established equidistant from the respective main shores of the two nations.

SEC. 67. The same argument, in support of such a boundary line as is contended for by the undersigned, and evincing how nugatory is the claim of a channel line, as urged on the part of the United States, is maintained by the latter words of Grotius first above repeated: "Sicut, si flumen exaruisset, imperii terminus maneret medieta alvei qui proximè fuisset; ita, mutato alveo, idem observandum erit." Now, as the same middle is to be the boundary between the two nations, if the river which divides them should entirely dry up, or if it should suddenly change its course, no reference could ever be had to a channel, to navigation, or depth of water, in establishing such middle as a boundary. As the commentator upon the same section observes: "Uti lapis usum termini præbet non quâ lapis est, sed quâ hoc loco positus; ita et fluvius est terminus populorum noi. quâ aqua est, ex certis fontibus, vivis aliis que fluminibus collecta, accerto nomine insignita, sed quaterus tali alveo fluit talibus que ripis includitur."

SEC. 68. In accord with the above understanding of Vattel, of Von Marten, and of Grotius and his commentators, are the terms employed by Lord Hawkesbury and by Mr. King in the first article of the treaty by them concluded at London, in 1803. That treaty having been returned unratified by Mr. Jefferson, is of no moment. The causes which occasioned him to return it, had reference to extraneous circumstances; namely: to a treaty made with another Power, which affected the ratification of the one in question. The present object is to exhibit the conceptions of the framers of it.

SEC. 69. The first article proceeds thus: "The line hereinafter described shall, and hereby is, declared to be the boundary between the mouth of the river St. Croix and the bay of Fundy; that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the commissioners appointed for that purpose; thence, direct to the middle of the channel between Point Pleasant and Deer island; thence, through the middle of the channel between Deer island on the east and north, and Moose island and Campo Bello island on the west and south, and round the eastern point of Campo Bello island, to the bay of Fundy." The extended phrase, "the middle of the channel and of the river," clearly exhibits the opinion of the before-mentioned plenipotentiaries, that, to procure a channel as a boundary, it was absolutely necessary to use the term "chan-

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nel," and that the expression "the middle of the river" was not sufficient to designate the channel; but to do so, they say "the middle of the channel of the river."

SEC. 70. The undersigned would resort farther, for a confirmed understanding of the terms here discussed, to the treaty itself, by which this commission was established, and to that in which this intended boundary was first designated. The expression used to denote the course of the line is, "through the middle of said river, lakes, and water communications;" and to these words apply the rules of interpretation of treaties.

SEC. 71. Vattel, the approved writer upon the law of nations, before noticed, proposes, as the first general maxim, "that it is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which this treaty naturally presents. To go elsewhere in search of conjectures, in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there can be no act which it will not render useless. Let the brightest light shine on all the parts of the piece, let it be expressed in terms the most clear and determinate—all this shall be of no use if it be allowed to search for foreign reasons in order to maintain what cannot be found in the sense it naturally presents"—(b. 2, s. 263.) Again he says, (b. 2, s. 271,) "The contracting Powers are obliged to express themselves in such a manner as they may naturally understand each other. This is manifest from the nature even of the act. Those who contracted concurred in the same will—they agreed to desire the same thing; and how could they agree upon it, if they did not understand it perfectly? If this were not the case, their contract could be nothing but either sport or a snare. If, then, they ought to speak in such a manner as to be understood, it is necessary they should employ the words in their proper signification—in the sense which custom has given them—and that they should affix to the terms they use, and to all their expressions, the received signification. They are not permitted to deviate, with design, and without mentioning it, from the common use and propriety of the expression; and it is presumed that they have conformed to it, while there is no pressing reason to presume the contrary; for the presumption is, in general, that things have been done as they ought. From all these incontestable truths results this rule: *In the interpretation of treaties, &c., we ought not to deviate from the common use of the language, at least if we have not very strong reasons for it.* In all human affairs there is a want of certainty; we ought to follow probability. It is commonly very probable that they have spoken according to custom; this always forms a very strong presumption, which cannot be surmounted but by a contrary presumption that is still stronger. But sovereigns (b. 2, s. 269) acknowledging no common judge, no superior that can oblige them to receive an interpretation founded on just rules, the faith of treaties here forms all the security of the contracting Powers. This faith is not less wounded by a refusal to admit an evidently right interpretation, than by an open infraction. It is the same injustice, the same infidelity; and for one of them to involve himself in the subtleties of fraud is not less odious."

SEC. 72 Now, if the channel had been intended as the boundary line, it is a very obvious term, and certainly would have been employed by

the plenipotentiaries at Ghent. That they should have resorted to the equivocal expression, "the middle of the river," &c., when there existed a term declaring their meaning with so great precision, would be charging them with inattention and ignorance—inattention, that they did not perceive the doubtful signification of the expression; and ignorance, that they were not acquainted with the rules of the interpretation of a treaty, the very instrument they were appointed to effect, and which rules must ever prevent the establishment of a channel as a boundary line; or it would be charging them with (what is more criminal than inattention and ignorance) a design to embroil their respective Governments by ambiguity of their creating.

SEC. 73. The ministers plenipotentiary, who formed the treaty of 1783, showed that they did not intend the channel to be the boundary by their employing another, though not a more common, expression than the word *channel*, to wit: "the middle of the river," &c.; the same afterwards adopted in the treaty of Ghent.

SEC. 74. For thirty-one years before the treaty of Ghent, the treaty of 1783 had been a subject of contemplation and discussion, particularly that part of it relating to the northern boundary. If the terms used in the old treaty were ambiguous, as they certainly would be were the channel intended or contended for, surely those who drew up the latter treaty would have removed the difficulty, by explaining the intention of the terms, rather than have so great an obstacle to be surmounted by the present commissioners under the treaty of Ghent, who have no negotiating power by which to relieve the case before them from embarrassment. They would have resorted to some expression for that purpose such as this: Whereas the terms "middle," &c., used in the treaty of 1783 to define the boundary, &c., are indefinite and ambiguous, therefore, to avoid future doubts, it is now determined that the same were intended to direct that the channel should be the boundary, and not the said line equidistant between shore and shore, as it has been shown was the case in the treaty made by Lord Hawkesbury and Mr. King.

PART IV.

SEC. 75. From a point in the river St. Mary's, just above St. George's island, to a point near the east end of isle Royale, in lake Superior, the commissioners having agreed upon the boundary line, and having described the same in their journal, and marked it accordingly on their maps by them certified and subscribed, (as set forth in their joint statement, which is recited in the 16th section of this report,) the undersigned proceeds to the consideration of the next difference, namely:

SEC. 76. That which regards the continuation of the boundary line from a point (before noticed) near isle Royale, in lake Superior, to Lac La Pluie, as described in the joint statement before mentioned.

SEC. 77. Without recapitulating the long and minute descriptions of the several routes claimed by the commissioners, respectively, between the two points last above specified, namely, in lake Superior and Lac La Pluie, the undersigned would briefly mention each, by naming the prominent waters, respectively.

SEC. 78. The American commissioner asked for a boundary line to be drawn from the point named, in lake Superior, northward of isle Pâté,

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to and through the Kamanistiquia river, Dog lake, Dog river, Lac de l'Eau Froide, over the Height of Land; thence, to and through the river Savannah, Mille Lac, Lac Dorade, lake Winebago, Sturgeon lake, the river Maligne, Lac La Croix, and lake Namecan, to a point in Lac La Pluie, below the Chaudiere falls, where (the question of portages being ended) the several routes assumed by the commissioners unite, as represented on the maps; and from which point, to the most northwestern point of the Lake of the Woods, they have agreed upon and determined the boundary.

SEC. 79. The British commissioner was of opinion that the boundary should be established from the said point in lake Superior, along and near to the north and west shores of isle Royale; thence, southwestwardly, through lake Superior, passing north of the islands called the Apostles, to and through the Fond du Lac, to and through the middle of the sortie of the estuary or lake of St. Louis river, to and through the middle of said lake and river St. Louis, to and over the Grand Portage of that river; thence, continuing up the middle of said river, to and over the Portage des Couteaux; thence, continuing up the middle of said river, to its junction with the Rivière des Embarras, through the middle of the said river and of its lakes, and through and over the portages thereof, and through the portage of the Height of Land, to the Vermillion river, through the middle of that river, to and through the middle of the lake Vermillion, and again continuing through Vermillion river and over the portage thereof, and through the middle of its small lakes, to and through the middle of Crane lake, and to and through the middle of lake Namecan, to Lac La Pluie.

SEC. 80. The undersigned will now state the grounds upon which his opinions have been formed in relation to this part of the boundary, leaving his colleague, the American commissioner, to perform the like duty in regard to his individual views, except where it may become convenient for the undersigned to refer to the same for explanation.

SEC. 81. Upon this portion of the contemplated boundary line there arise two prominent questions: 1st. Which of the several water communications between lake Superior and the Lake of the Woods is to be adopted? 2d. Whether the portages are by any means to be preserved open and free for the use of both parties?

SEC. 82. 1st. Upon the result of the question, which of the several water communications between lake Superior and the Lake of the Woods is to be adopted? must depend the direction of the boundary line beyond isle Royale, and, consequently, the allotment of several small islands in lake Superior.

SEC. 83. That part of the treaty of 1783 which describes the portion of the boundary now under discussion, is in these words: "through lake Superior, northward of the isles Royale and Philipeaux, to the Long lake; thence, through the middle of said Long lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said lake, to the most northwestern point thereof."

SEC. 84. In reference to the isles Philipeaux, mentioned in the treaty, it is to be observed that the commissioners who negotiated the treaty of 1783 employed Mitchell's map of America for the general purposes of describing the boundaries; that Mitchell's map has no pretension to any

authority ; that it is very defective, and extremely erroneous in numerous particulars ; that, among other errors, it has a group of three islands, there denominated isles Philipeaux, placed to the southeast of isle Royale, and one of them nearly as large as the last-named island ; that in the surveys of this lake, performed by the direction of this commission, no such islands have been discovered, nor have any such been found by his Majesty's naval surveyors, who have been engaged there for several years immediately previous to 1825 ; nor are they known by the Indians, nor by any other persons familiar with those waters, either by this name, or by the location given them in the map.

A certified copy of this part of Mitchell's map is placed in the appendix, letter D.

SEC. 85. There are two modes of accounting for the alleged existence of these islands: 1st. By the deceptive appearances of certain lands, resembling islands, in the direction assigned to the isles Philipeaux by Mitchell's map. 2d. By referring the origin of their alleged existence to a literal fable of the Indians.

SEC. 86. 1st. On the first mode of accounting for the story of these islands, the undersigned deems it not important to introduce any more formal evidence (although it is at hand) than his own declarations. He has been informed, by a person familiar in making the canoe voyage of the south shore of lake Superior, that in proceeding along that coast, from the river St. Mary westward, when the highland of cape Kewawoonan first presents itself to view, it has the appearance of a great island far at sea in the lake, precisely in the supposed direction of the eastern part of isle Royale ; which is just the position given on Mitchell's map to the isles Philipeaux.

SEC. 87. It is remarkable that in making the canoe voyage of the lake along the north shore, there also the eye is struck with the appearance of large islands to the east of isle Royale, which are ascertained, however, by the surveys of this commission, (and never before, as the undersigned believes,) to be elevated parts of the eastern portion of isle Royale, which may be seen at a distance when the lower connecting parts are invisible. The undersigned declares that, from his own repeated observation of the above fact, he could not have been prevailed upon to doubt the existence of several large islands in the range of isle Royale, eastward, if he had not received assurances to the contrary, from persons who had been engaged on the survey. The coincidence of this appearance, from both the south and north shores, seems sufficient to authorize the alleged existence of islands in those parts, when the craft of the lake did not permit a better investigation.

SEC. 88. 2d. As that alleged existence of the isles Philipeaux proves to be fabulous, so the belief in them appears likely to have been supported by a literal fable of the Indians.

The Indians fix the residence of their Manitou, or Great Spirit, in fabulous spots, or in such real regions of nature as are not subject to be frequented by man. The magnitude of the Great Lake, as they term lake Superior, afforded them a fit habitation for him : for they had no conception of any vessel larger than their canoes, which are obliged to hug the shore—no idea of ships which could venture to traverse all parts of this inland sea. Thus, secure as they thought their Deity from intrusion, they probably told the first Europeans concerning these sacred islands.

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Their belief also may have been supported by the deceptive appearances before mentioned. These travellers or traders, as yet navigating in canoes in the Indian style, and unable farther to scrutinize the story, gave credence to it, and attached to the islands the name Philipeaux, in honor of some of their princes, as isle Royale was christened after their monarch.

SEC. 89. No such islands being found as are placed down in Mitchell's map under the name isles Philipeaux, isle Royale (longer known under the appellation of isle Menon) and the small islands around it, were in due course surveyed under this commission.

SEC. 90. In continuing the boundary line from isle Royale, (no islands by the name of Philipeaux being found or known to the westward either,) the next object was to ascertain the Long lake.

On this point, as was the case in regard to the isles Philipeaux, both the American and British parties at first looked to Mitchell's map for information. On reference to that map, Long lake was found to be placed at the mouth of Pigeon river, on the northwestern shore of lake Superior.

In this instance, as well as with respect to the isles Philipeaux, Mitchell's map proved to be unsatisfactory, erroneous, and without authenticity. The western shore of lake Superior, including the discharge of Pigeon river, was surveyed by order of this commission. The result of that survey is delineated on the maps of the commissioners, which will accompany their reports to the two Governments. From these maps it will be seen that there is no lake whatever, much less a long lake, between lake Superior and Pigeon river. That river empties into a small bay of lake Superior, but such a bay as has no claim to be called a lake: increasing in width, through its whole distance, from the river to lake Superior.

SEC. 91. At the meeting of the commissioners, held in Montreal, on the 25th day of October, 1824, the agent of the United States presented a memorial, in behalf of his Government, praying the board to proceed forthwith to determine what was meant by the Long lake; and submitted documents, and an argument, to show that the said lake is the place now known as the Pigeon river.

SEC. 92. At this time the commissioner of the United States appeared to accord in opinion with the agent of his Government. The undersigned declined, however, to proceed to the settlement of that point separately, before the whole line of boundary was surveyed and ready for adjudication; whereupon the consideration of the question was postponed.

SEC. 93. At a subsequent day it became convenient for the agent of the United States, as will be made to appear hereafter, to abandon this claim, and to urge a route 40 miles farther north, by the Kamanistiquia river, as the water communication from lake Superior, through the Long lake, to the Lake of the Woods; in which claim, also, he was supported by the American commissioner, notwithstanding the discrepancy thereof from his former demand. This claim was produced by the notice given by the undersigned, (at the same meeting at which the American agent presented the memorial before mentioned, requiring the Pigeon river to be fixed at the Long lake, but at a later hour,) that the British surveyors would be directed to survey the St. Louis river, as affording, in his opinion, the most probably true course of the boundary through the Long lake. At present, this statement is made merely to preserve the succession of events in regard to time. The subject will hereafter be resumed.

SEC. 94. The grounds of the opinion of the undersigned, that the St. Louis river is the true course for the boundary, are fivefold :

- 1st. That it affords the most ostensible Long lake ;
- 2d. That it is an ancient commercial route ;
- 3d. That it is the most navigable, and interrupted by far fewer portages ;
- 4th. That it was anciently called " the Lake, or St. Louis river ;"
- 5th. That the language of the treaties infers that the boundary west of Isle Royale should run to the south thereof.

SEC. 95. 1st. The river St. Louis affords the most ostensible Long lake. The words of the treaties of 1783 and of 1814, describing this section of the boundary, are, " through lake Superior, northward of the isles Royale and Philipeaux, to the Long lake."

SEC. 96. On these words it is to be observed, that in all other parts of the treaty descriptive of the boundary line between lakes, the terms " through said lake to and through the water communication into the lake" next in continuance are employed. In this instance, however, the words " to and through the water communication" are omitted.

SEC. 97. This is, in fact, the only instance in which there is a pretext for supposing that there is no " water communication" connecting, or required to connect, any two lakes successively specified in the treaty. In all other portions of the boundary the several lakes are united by rivers. In conformity with this view, the American agent and commissioner first thought of fixing upon the bay at the mouth of Pigeon river, (which has no water communication, river, or narrow passage, to connect it with lake Superior, but is united immediately, without any contracted separation,) as the Long lake.

SEC. 98. Under this view, also, the undersigned had regard to the lake by which the St. Louis river discharges itself into lake Superior. That river, after running through several lakes, towards lake Superior, when it approaches the last named lake, itself expands into a lake upwards of nine miles in length, and from two-thirds of a mile to one mile and a third in breadth, (as may more fully appear from the affidavit of Mr. Samuel Thompson, one of the assistant surveyors of the board, to whom this survey was committed, placed in the appendix under the letter E ;) after which it discharges into the great lake Superior, not by a bay, as does the Pigeon river, but by a narrow mouth formed by two mere points of land, and so affording no continued river, requiring the title of " water communication" between it and lake Superior, but connected intimately and immediately by a strait, without length ; so that, in proceeding from lake Superior to this lake which discharges into the St. Louis river, one goes at once from lake Superior into the Long lake ; all of which will be perceived more satisfactorily from the maps of the commission, a certified copy of this part of which will also be found in the appendix, under the letter F.

The dimensions of this lake, as just specified, and as exhibited on the maps of this commission, perfectly merit for it the appellation of " the Long lake." To this fact the undersigned solicits particular attention, in concluding his remarks on the 1st head.

SEC. 99. 2d. The St. Louis river is an ancient commercial route.

SEC. 100. To this fact the undersigned will adduce the testimony of the honorable William McGillivray, many years a partner of the North-west and Hudson's Bay Companies, a gentleman familiar with all the his-

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tory and geography of the regions in question, having spent a large portion of his life there ; he was, for a number of years, member of the executive and legislative councils of Lower Canada, and was well known in the British Provinces, in Great Britain, and in the United States, as an intelligent and honorable man.

SEC. 101. Mr. McGillivray states, (in his letter dated the 4th of September, 1824, addressed to the honorable John Hale, British agent to this commission, of which a certified copy is contained in the appendix under letter G :) " There is, however, another route of communication with the interior from lake Superior, and the one which should have been fixed upon as the boundary line at the time of making the treaty of Paris. Into the west bay of lake Superior, known by the name of Fond du Lac, falls the river St. Louis, by far the largest stream which that lake receives into its bosom. By this river, and in its vicinity, there is a route to the interior country, (to lake La Pluie and the Lake of the Woods;) it was practised from the year 1796 by the Northwest Company, until that country was given up to the Americans, in consequence of the treaty of Ghent, and has since that time been constantly used by the American Fur Company."

SEC. 102. The original letter, from which the above extract is taken, was presented in evidence before the board, by his Majesty's agent before mentioned, and by the commissioners ordered to be filed, on the 5th of October, 1826 ; it being duly testified upon the same, by Henry Carey, Esquire, of the city of New York, that he was for a long period intimately acquainted with Mr. McGillivray ; that he had very often seen him write ; and that the letter, and the subscription thereto of the name " W. McGillivray," is in the handwriting of the said William McGillivray.

The British agent stated, in presenting the said letter, that Mr. McGillivray had died some time before, in London ; which prevented his affidavit having been produced to the substance of his letter.

SEC. 103. The affidavit of Mr. Astronomer Thompson, set forth in the appendix, under letter A, states that Mr. McGillivray left Montreal about the month of August, 1825, and that he died near London in October of that year.

SEC. 104. It cannot be said that there appears any neglect in the British agent in not procuring the oath of Mr. McGillivray to the substance of this letter at an earlier period ; as, from the date at which it was filed, it is manifest that, had he not died, there was ample time, to wit, eleven months, in which the affidavit might have been taken.

SEC. 105. To the same purport is the modest evidence of the experienced Mr. Astronomer Thompson, contained in his affidavit (appendix, letter B) before mentioned, as follows : " The route to the interior countries, by the river St. Louis, is, in my belief, the most ancient ; and next in order, the old commercial route by the Great Carrying-place and the Pigeon river. Until the year 1801, the Kamanistiquia river and its route was in a manner unknown to the British fur traders "

SEC. 106. But why should the undersigned perform the superfluous labor of adducing proof of the antiquity of the route by the St. Louis river ? It is a fact as notorious as are the name and situation of that river. Every man acquainted with the geography, the first settlement, (if the visits of travellers and traders may be so termed,) and the commerce

of the Northwest, knows it; the spot marked "old Northwest Company's Factory," in the map of the estuary of the St. Louis, (of which a copy is inserted in appendix, letter F,) is as generally known to be the site of a French fort; and if of a French fort, it cannot be denied that the acquaintance with it is of old standing.

SEC. 107. The route intended by the treaty of 1783 must have been one well known at the date thereof, or the ministers negotiating could not have taken cognizance of it.

SEC. 108. If it be alleged that the Pigeon-river route is also ancient, the undersigned, without denying this assertion, denies that the Pigeon river route possesses the other qualifications required. It exhibits no such Long lake as the treaty describes; and the only body of water, in the whole course of its communication between lake Superior and Lac La Pluie, which has any pretension to that appellation, is Crooked lake, with the waters connected thereto, west of the Height of Land.

SEC. 109. Let an examination now be made, whether the Kamanistiquia river, claimed as the proper course for the boundary, by the American agent and commissioner, is an ancient route, and whether it has the Long lake required.

SEC. 110. That the Kamanistiquia river is not an ancient route, appears from the letter before mentioned of Mr. McGillivray, filed in evidence before the board in October, 1826, of which a copy is contained in the appendix, letter G. The following is an extract:

"This *new* communication [speaking of the Kamanistiquia river] can be no question in the present discussion, for it never was practised by the French as a communication to the interior, although they had trading-posts on the river Kamanistiquia, near the banks of lake Superior; and so little was it known, that, before the Northwest Company could venture to send canoes by it, a minute survey was made (by the writer of this) in 1802, in order to ascertain its practicability." And again, in the same letter: "To the *new* route from Fort William [which is that by the Kamanistiquia river] they [the United States] have no pretension whatever, as it was never practised by the French, nor by the English traders until 1803. And one reason for the Northwest Company's abandoning the Grand Portage [the communication required to the Pigeon river] at that time, (which was done at a great sacrifice,) was a fear that the collector of the customs at Michilimackinac [the American island and garrison at the entrance into lake Michigan] would send officers to raise duties on our goods. This had been threatened, and I have no doubt would have been attempted, had we remained much longer at the Grand Portage."

SEC. 111. To the same effect is the affidavit (B, in the appendix) of Mr. Astronomer Thompson:

"That the agents of the Northwest Company asserted that they opened the route to the interior countries by the Kamanistiquia river, on account of the duties threatened to be imposed on their goods by the United States collector if they continued at the Grand Carrying-place; and this route was not opened until the year 1801."

SEC. 112. At the close of the next (the 3d) point to be spoken to, further corroborative evidence will be adduced both upon this and that head.

SEC. 113. That the route by the Kamanistiquia river has not the Long

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lake required, will appear from the maps of the surveys executed under this commission. Not that the undersigned intends to refer to any map as containing a survey of this river, except the British map, which exhibits the mouth thereof only, to show that there is no Long lake at that place. There is no Long lake upon this route immediately connected with lake Superior, as required by the treaties, without contracted water communication. In proceeding from lake Superior, by the Kamanistiquia river, the entrance is sudden from the great lake immediately into the narrow river last named; and that river is to be ascended nearly forty miles, over very long, difficult, shallow rapids, to the Kakabikka or Mountain falls; thence, about the like distance, to the Dog portage, which connects the communication with the Dog lake, after the traveller has been obliged to traverse twelve portages and décharges between that lake and Fort William, near lake Superior, at the mouth of the Kamanistiquia river.

SEC. 114. This Dog lake, notwithstanding its remoteness from lake Superior, has been claimed by the commissioner of the United States, conformably with the oscillations of the agent of the same Government, as the Long lake.

SEC. 115. After the intimation heretofore made, that the American agent had presented a formal claim to the board in 1824, calling upon the commissioners to fix upon Pigeon river as the Long lake, it would be difficult to comprehend how the Dog lake should now be claimed as the Long lake by the same gentleman, and by the commissioner in behalf of the United States also, without a sketch of the proceedings in relation to these subjects. To this irksome task the undersigned must submit.

SEC. 116. In October, 1824, the agent of the United States presented a memorial to the commissioners, in the following terms:

“MONTREAL, October 25, 1824.

“The agent of the United States has the honor to ask that the board do now proceed to determine the proper place of departure of the boundary line from lake Superior to the northwest, with a view to supersede the necessity of any further surveys in that direction. That the Long lake intended by the treaty of 1783, to which the line is to run, from the north of isle Royale, is a sheet of water now known by the name of Pigeon river, and is situated near the old Grand Portage; and that it is consequently the route intended to be described by the said treaty, he conceives is sufficiently substantiated by the following testimony, which he has the honor to present:

“First, Mitchell’s map of North America, published in 1755, under the sanction of the Lords Commissioners for Trade and Plantations. This map shows the place called Long lake to be the mouth of Pigeon river, (as now called,) near the old Grand Portage.

“That it was Mitchell’s map upon which the boundary line was described by the commissioners in 1783, as established by the following documents, which he begs may be filed with the records of the commission.

“JOSEPH DELAFIELD,
“Agent of the United States.”

SEC. 117. The documents alluded to are copies of two or three letters intended to show that Mitchell's map was used "through the whole negotiation" which produced the treaty of 1783, and that the boundary lines of the United States were marked on that map. The memorial and documents are set forth at length in the appendix, under the letter H.

SEC. 118. The facts designed to be proved by these documents, as recited in the last section, have never been denied. But the inference then desired by the American agent, that Mitchell's map was therefore true, conclusive, and obligatory upon the commissioners, was *never admitted* by the undersigned, nor would the agent of the United States *now* wish to admit it. It remains for the commissioner of the United States to show how the inconsistency manifested by the American agent (which the undersigned is now about to exhibit, but wherein he is unable to say whether the commissioner of the United States preceded or followed his agent) is to be excused. This he may perform with the greater address, as he also is interested in the same charge.

SEC. 119. It is to be observed that the prayer of the above memorial was refused in consequence of the dissent of the undersigned.

SEC. 120. The undersigned then expressed his opinion at the board, that the true Long lake was to be found at the St. Louis river, and that he should therefore require a survey thereof. Whereupon, the agent of the United States remarked, that in such case he would abandon the claim made in the said memorial, and advance a claim to the Kamanistiquia river as a boundary.

SEC. 121. This threat, intended to induce the undersigned to relinquish his views to the Long lake of the St. Louis river, was actually carried into execution at the meeting of the board in October, 1826.

SEC. 122. The object designed by this extended demand of territory must be palpable—indeed, it is no new finesse. A party desirous of a certain extent of interest, in which he has no right whatever, makes a claim for double the extent required, that he may effect a liberal compromise by conceding half.

SEC. 123. The undersigned is of opinion that it was fully competent and proper for him, as one of the commissioners, to refuse to allow this second claim of the agent of the United States, as being inconsistent in itself, inconsistent with the practice of all constituted courts and formal boards of appeal, and inconsistent with principle. But he was unwilling to exercise this authority, as it would certainly have been made a pretext for saying that the United States had thus been deprived of their strongest arguments upon the Long lake; although it appears to the undersigned that they are of a far different character, and that (of whatever force) the United States have forfeited their title to the benefit thereof by their former claim, to which they are bound to adhere.

The undersigned feels it his duty to urge that this gross departure from consistency in the American agent ought not to be allowed, but that the Government of the United States should be precluded by his first claim from making any other upon that subject, whereby, if the claim of Great Britain to the Long lake of the St. Louis be not satisfactorily established, (as the undersigned considers it to be, and that it will be made to appear,) the only authorized route for the boundary line would be the Pigeon river.

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SEC. 124. To return to the merits of Dog lake, considered as the Long lake.

This lake has been known as the "Lac des Chiens," and by no other name than that, or its interpretation, from the very first recollections of the French settlements in that country; and in this the French copied the Indians.

In proof hereof, the affidavit (A, in the appendix) of Mr. Astronomer Thompson is again quoted:

"That he (the deponent) was about sixteen years in the service of the Northwest Company, either as astronomer and clerk to, or as a partner of, the said company; that he had to become acquainted with the language; that he never heard the Dog lake, (Lac des Chiens,) either by the natives, or the traders or their men, ever called by the name of the Long lake; that the river which forms the Dog lake, the lake itself, and the carrying-place out of this lake, (to avoid heavy falls, and the river below, to the best of his knowledge, are called Dog river, lake, and carrying-place, &c., from the translation of the native name, Animos Sepee, (Dog river,) Animos Sakahagan, (Dog lake,) &c.; and the shape of the Dog lake by no means entitles it to the name of "Long lake." Nor, to the best of his memory, was such a name brought forward for the Dog lake, by the agent of the United States, until after the survey of the St. Louis river, &c., was ordered by the British commissioner."

If old established names were to be thus arbitrarily altered, according to the caprice of a party, to answer the interest of the moment, there would be no end to claims, no limit to altercations. But why should the subject be argued? It is surely too absurd to be entitled to consideration. Dog lake is as well known by that name, and as exclusively, as London and Washington are by their names respectively; and it would not be a more bold undertaking to attempt to fix another appellation to either of those capitals than to attempt it in regard to Dog lake.

SEC. 125. Farther: neither the relative nor the positive proportions of Dog lake entitle it to the appellation of Long lake.

In proof of this fact the undersigned would confidently appeal to a map of an actual survey of this lake, if any such had been made or performed under this commission. But no express order was ever given by the commissioners for the survey of this route by the Kamanistiquia river and Dog lake; and if any actual survey was ever made of it, more than merely passing through it, the same was made only by the surveyors appointed on the part of the United States; and of such survey no map has been adduced by them for the examination, signatures, and certificates of the commissioners. Consequently, no such authorized map will be found in the portfolio of the commission sent to the respective Governments. A strict survey thereof was never thought necessary by the officers employed on behalf of Great Britain, in consequence of the American claim having been originally fixed upon Pigeon river.

SEC. 126. But as it is possible that, for this or other purposes, "A general map of the country northwest of lake Superior," (signed by George W. Whistler, draughtsman and assistant surveyor of the American party, and by Samuel Thompson, draughtsman and assistant surveyor of the British party,) may be referred to in behalf of the United States as evidence, the undersigned here, once for all, protests against that map as possessing any authority. It is true that map is referred to by the

commissioners ; only, however, to give a general view of the relative position of the several water communications between lake Superior and the Lake of the Woods, which have been subjects of discussion in this commission ; and, that no mistake might be made in relation to the import of this reference to the general map, the undersigned was careful to insert, in the very same line, that, "for greater exactness," reference must be had "to the series of maps before mentioned of the surveys made by order of the commissioners."

If it should be farther urged by the American commissioner, that the fact of this general map being allowed to be placed on the files of the board proves that the commissioners at that time intended to admit it as authority, the undersigned answers, that the commissioner of the United States well knows that the contrary is the case, not only from the objection made by the undersigned at the time that map was offered to be filed by the American agent, that it could not be admitted as positive, but only as "*ex parte*" evidence, but also from the rule adopted by the commissioners, that whatever was offered by either party should be entered on the files, not as evidence allowed, but for as much as it was worth.

SEC. 127. Now, as respects the application even of this map to the present subject, the figure assigned to Dog lake hardly entitles it to be called Long lake by way of eminence ; although the undersigned is of opinion that the relative proportions of it have been strained to the utmost, to answer the object of the American agent, by whose procurement that part of the general map was protracted.

This opinion is formed by the undersigned from his personal observation and examination of Dog lake.

SEC. 128. With this opinion accords that of Mr. Surveyor Thompson, contained in his affidavit A, before cited, as follows : "The shape of the Dog lake by no means entitles it to the name of Long lake."

SEC. 129. The maps will show that there are several other lakes in the several routes surveyed between lake Superior and Lac La Pluie, which much more merit, from their proportions, to be styled Long lake ; and it cannot be questioned that any body of water described by so significant a term must have been so denominated, "*excellentiæ gratiâ*," from the peculiar applicability of the appellation.

SEC. 130. The third point to be shown is, that the route by the St. Louis river is the most navigable, and interrupted by far fewer portages.

To this point the undersigned refers in evidence—First, to the map of this route made by order under this commission, and signed by the commissioners and surveyors, which he begs to have compared with the maps of the other two routes in question, (although the survey of the Kamanistiquia route is defective, as has been already stated ;) all of which exhibit the portages with their respective lengths. Secondly, to the affidavit of Mr. Samuel Thompson, one of the assistant surveyors to the commission, (set forth in the appendix under the letter E,) and to the affidavits, A and B, of Mr. Astronomer Thompson.

SEC. 131. The affidavit of Mr. Samuel Thompson, who surveyed the St. Louis river, states that he is "well acquainted with the route by the Grand Portage and Pigeon river, having surveyed this route by the orders of his Majesty's commissioner under the 6th and 7th articles of the treaty of Ghent ; it has thirty-four carrying-places. The route by the St. Louis river has twenty one carrying-places ; and from its having but one river

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leading to the height of land, and from this height of land to another river, (Vermillion river, flowing in a continued stream to the Lake of the Woods, I consider this route as the most continuous water communication of the two."

SEC. 132. The affidavit A, of Mr. Astronomer Thompson, states: "Along the whole circuit of lake Superior, this river (the St. Louis) has no parallel for being navigable, for its soil, climate, and the fine extensive countries it leads to. This he deposeth from his own personal knowledge," &c.

SEC. 133. The affidavit B, of this gentleman, alleges "that the route by the Pigeon river has 34 carrying-places, that the route by the Kamanistiquia river has 31 carrying-places, and several décharges, (or partial unloading of cargoes.) When the water is high, very many of its rapids are dangerous, and in years of very low water it is almost impassable, from continued shallows."

SEC. 134. To the above the undersigned would subjoin his own testimony: that he has passed through the Pigeon river route in a season of low water, when there were 38 portages and 2 décharges between lake Superior and Lac La Pluie, (to which place all these calculations have reference, in consequence of the controverted portages terminating there, although the lake of the Woods may be named;) and that he has been obliged to perform 7 décharges besides portages, between the same Lac La Pluie and lake Superior, by the route of the Kamanistiquia river, at which time, returning with light canoes from the interior, it was necessary for the voyageurs (canoe-men) to walk in the water, and to lift the canoes along over the shallows for a distance of 20 miles, more or less, below the Kakabikka or Mountain Fall, in which distance the length of portage also was greatly increased by the want of water.

SEC. 135. Major Long, of the United States army, made an expedition by the authority of his Government to St. Peter's river, and returned through the Lake of the Woods and the Kamanistiquia river to lake Superior, while the surveys of this commission were in progress in these regions.

In the report to Government of Long's second expedition, (vol. 2, p. 235,) it is stated that the Grand Portage and Pigeon river form "the only route frequented till within a few years," and the Kamanistiquia river is called the "new route." At page 237 the narrative proceeds:

"On this route (the Kamanistiquia) the portages are equally as numerous and more extensive than on the other, nor are its other impediments less formidable. Rapids and cataracts abound; among the latter is one of the most magnificent cascades to be found in any country; it is denominated by the Indians the falls of Kakabikka or Cleft Rock, and situated about 30 miles upwards from the mouth of the river," &c. The whole body of the river is precipitated in a dense sheet down a perpendicular precipice, more than 130 feet, into a deep chasm bounded by perpendicular cliffs of the height just mentioned; the banks of the river for the distance of nearly one half of a mile below are completely insurmountable, rising perpendicularly, and in many places overhanging their basis. Below the falls of Kakabikka the river presents a continued rapid for the distance of about 20 miles."

SEC. 136. As some objection was made by the American agent to the evidence of Mr. McGillivray's letter, (see sec. 110,) in consequence of

the want of formality—the cause which previously prevented the matter thereof being put into the form of an affidavit still operating, to wit: the death of Mr. McGillivray, which has been sworn to by Mr. Thompson—the affidavits of several most respectable gentlemen have been furnished to the undersigned, corroborative of the facts set forth by Mr. McGillivray. Although it is admitted that these affidavits were not in evidence before the board—for the duration of the session did not admit of procuring them after the objection to the letter had been made—yet the undersigned thinks they are perfectly good as corroborative evidence to confirm the facts set forth in that document, to which it was impossible to procure the oath of the party.

SEC. 137. The undersigned, therefore, invites particular attention to the affidavits hereafter to be specified, formally taken according to law and to the order of the board, of which certified copies are set forth in the appendix to this report, to wit:

SEC. 138. The affidavit (I) of Colonel William McKay, many years a partner of the Northwest Company, now, and a long time past, agent for Indian affairs, who spent a large portion of his life in the countries northwest of lake Superior, and who, in the year 1801, first examined the water communication by the Kamanistiquia river, preparatory to a survey with a view of opening a new route for the traders.

SEC. 139. The affidavit (J) of Mr. Jean Baptiste Pomainville, formerly a clerk of the Northwest Company, and since employed confidentially for several years in the surveys under this commission, both by the British and American parties. He attended Colonel McKay in his investigation of the new route in 1801.

SEC. 140. The affidavit (K) of H. McGillis, Esq., a justice of the peace for the eastern district of Upper Canada, formerly a partner of the Northwest Company, who states (as did Mr. McGillivray in his letter) that a second examination of the new route was made and the road marked out in 1802, by which the fur trade was in future to be carried on; also, that he himself was engaged in the year 1803 on the new route, with a party of 40 men, making roads through the forests, and cleaning rivers and brooks of obstructions; and that to all appearance this route had never been practised, unless by the few Indians whose hunting grounds lay in that direction.

SEC. 141. The affidavit (L) of David Cameron, Esq., also a justice of the peace for the eastern district of Upper Canada, formerly a partner of the Northwest Company.

SEC. 142. The affidavit (M) of John McGillivray, Esq., also a partner of the Northwest Company.

SEC. 143. All these gentlemen testify in a most circumstantial manner to the same facts set forth in the letter of the honorable William McGillivray, and to this general effect: that the Kamanistiquia river is a new route, opened since the year 1801; that it is longer, more dangerous, and more laborious, than the route by the Great Carrying-place and the Pigeon river.

SEC. 144. Having finished with the evidence on the three points already introduced, the undersigned would here pause, to solicit particular regard to this fact: that the water communication from lake Superior by the St. Louis river is more easy of navigation, more free from interruption by portages and shoals, and more direct, if considered with refer-

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ence to the voyage from the Sault de St. Marie, than either of the other routes described; and that, next to that, the route by the Grand Portage and Pigeon river is preferable; because they merit preference in this order, even according to the principles which the American commissioner has pretended to contend for, and probably may again urge, in his report, namely, of adopting "the most direct and continuous water communication."

That such should be selected for the course of the boundary, where no strong objection presents itself, the undersigned is willing to admit. In this case no objection offers; on the contrary, the superior facility of passing to and fro by the St. Louis river (in consequence of its greater proximity to the Sault de St. Marie, which is the only communication from the civilized world, and of its exemption in a great degree from the labors and dangers of portages) is so apparent that, in a treaty of territory and navigation, no party having equal rights would consent to relinquish or to hazard it; and, well known as this route was, at the time of, and long previously to, the treaty of 1783, can it be supposed possible that Great Britain would concede such an advantage? Is it not rather presumable, as the route from the Sault de St. Marie, along the south shore of lake Superior, by the St. Louis river, is much the shortest way to the northwestern countries beyond lake Superior, as no guides are required upon that route, owing to its great distinctness, stated in Mr. Samuel Thompson's affidavit, (E.) As it is not only the most *direct*, but also the most *continuous*, water communication, and the oldest route to the Lake of the Woods, which is the ultimate tendency of this boundary, is it not presumable, it is repeated, that it is the very course intended by the negotiators of the treaty of 1783? To gain an affirmative reply to both the above interrogatories, it is only necessary (having already shown, sec. 136 to 143, the far less number of portages by the St. Louis river) to become acquainted with the vast toil, the loss of time, the consumption of provisions, (that precious article in a remote wilderness,) and the accidents to stores, goods, canoes, and men, which attend these portages; and, after description shall have done its best, or rather its worst, it will afford but a half-wrought picture of the multiplying and ever-varying embarrassments experienced by the voyageurs of the Northwest.

SEC. 145. The canoes generally used on the waters northwest of lake Superior, as the largest which the depth of water in the small rivers will admit, are about twenty-eight or thirty feet in length, four and a half feet wide, and two feet deep. They are navigable by six canoe-men, (there called "voyageurs,") are adapted to convey two persons, in addition, with three thousand weight of stores, goods, and baggage. This amount is divided into *pieces* (technically called) weighing each about ninety pounds, to facilitate the carriage of them across the portages. These pieces, containing bread, beef, pork, liquor, clothing, merchandise, and whatever may be required, are to be transported over the portages, from water to water, two at a time, upon the backs and shoulders of the men, in which manner the canoe also is to be carried, which, being made of the most fragile materials, requires the most diligent care, but does not always escape disaster. Many of these portages are mountainous, most of them very rocky and rough, some are both; from which causes the labor and accidents to luggage, canoes, and men, are very

much increased. Some of the portages require several days to accomplish them. During these delays, and the consequent separation of stores, baggage, and proprietors, frequent losses are sustained by the depredations not only of the natives, but also of the voyageurs themselves, whose consciences become composed by scanty allowances, there rendered necessary. Before the long portages are completed, frequently some of the men are taken sick, either from accidents or from fevers produced by fatigue and galls.

"Qua fuit durum pati
Meminisse dulce est."

SEC. 146. These are exposures which ought to be diminished in number as much as possible. They are a great obstruction to the profits of commerce, to the facility of transportation, and to the despatch of travelling. They can be diminished to the traders and travellers of both countries only by selecting that water communication, (called for by treaties,) for the course of the boundary, which is obstructed by the fewest portages; then, by conducting the line through the middle of the portages, where the water communication ceases to be navigable, (which is always the case where portages have been opened,) or (if the line be continued along the waters in such cases) by declaring the portages on both sides of the water free to the lawful use of both nations, the best route would be open to both. Such route is that by the St. Louis river, as has already been proved.

SEC. 147. 4th. The undersigned proceeds to the fourth proof in favor of establishing the boundary through the St. Louis river, to wit: that it was from of old called "the Lake, or St. Louis river."

SEC. 148. That this is the fact, the undersigned first appeals to those who are intimately acquainted with these regions, and with the present and past history of them.

SEC. 149. In the next place, in proof of this fact, that this is a name well known as appertaining to the St. Louis river, the undersigned would refer to several authorities filed by the American agent, and eulogized in his memorial of October, 1826. These authorities are copies of maps, of which certified copies (in part) will be found in the appendix to this report:

1st. A copy of the map to Charlevoix's Travels in America; published in London, 1763.—(Appendix, N.)

2d. A map of "North America, from the French of Mr. D'Anville, improved, with the English surveys made since the peace; printed for Laver & Bennet, Fleet street, 10th June, 1775."—(Appendix, O.)

3d. The map of "the United States of America, with the British Possessions of Canada, Nova Scotia, and Newfoundland, divided, with the French and Spanish Territories of Louisiana and Florida, according to the preliminary articles of peace signed at Versailles the 20th January, 1783; printed for Laver & Bennet, Fleet street, 9th February, 1783."—(Appendix, P.)

4th. The map of "the United States of America, laid down from the best authorities, agreeable to the peace of 1783; published, April 3d, 1783, by the proprietor, John Wallis, Ludgate street, London."—(Appendix, Q.)

5th. The map of "the United States of America, with the British Possessions of Canada, Nova Scotia, New Brunswick, and Newfound-

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land, divided, with the French; also the Spanish Territories of Louisiana and Florida, according to the preliminary articles of peace signed at Versailles, 20th January, 1783; published by Laurie & Whittle, Fleet street, 12th May, 1794."—(Appendix, R.)

These several maps have the river in question designated as "the Lake, or St. Louis river."

SEC. 150. The undersigned trusts that these will be considered sufficient evidence of the fact that the river in question is and was anciently (for the country spoken of) known by the name of "the Lake, or St. Louis river." The inference to be drawn is, that it received that appellation, "*excellentiâ gratiâ*," on account of its course being formed in part by the lake which was formerly regarded as the polar star of the travellers and geographers of the northwestern regions; and which, although specified on these maps only by the definite article which is connected with it, "*the Lake*," is yet more strongly particularized, in the treaties describing this boundary, as "*the Long lake*," still retaining the definite article, to signify *the Long lake* which is paramount to all others, and which gives admission to the easiest as well as the safest water communication to the vast Indian countries of the interior.

SEC. 151. There are various Long lakes delineated on the common maps of the regions northward and westward of lake Superior, some true and some false; but not one of them has been found to be qualified in this pointed manner, as *the Long lake*, except that of the St. Louis. Each of the others will be perceived to be termed simply Long lake, and that not as any distinguished point among travellers and geographers, or in public documents, but merely to designate the same to be a long lake, according to report, in reference to the other lakes of the same chain of water communication. Thus, there is a lake known as Long lake at the head of Black river, west of the Peak river, which discharges into lake Superior on the north shore; a Long lake, according to some maps, upon the Kamanistiquia river route, although none is there known by that name by any travellers; a Long lake of the Rivière aux Tourtres, or Pigeon river, according to others, which also has no actual existence; lastly, there is the Long lake of the Lake, or St. Louis river, which nature has marked in a manner not to be mistaken. Whereas, with regard to the first, it has never been dreamed of as the Long lake intended by the treaties, except in the last vision of the American agent; as to the second and third, it is alleged that there exists no Long lake on either route, unless that name be transferred to a lake always known by another appellation.

SEC. 152. Whether these lakes, however, as designated on the old and inaccurate maps, were real or not, matters not in the argument. By the map-makers and by the map-buyers they were supposed to exist, until, by penetrating and examining the country, (as was done by the officers of this commission, and by a few other travellers,) they were found to have no place in creation. But, real or imaginary, it was necessary to distinguish them, while they were believed in. The only one about which there is no doubt, the existence of which, the immediate connexion of which with lake Superior, the appropriateness of the name of which, the ancient knowledge of which as a great water communication, and the pointed distinction of which by the language of the

treaty, render it conspicuously eminent, is the Long lake of the Lake, or St. Louis river.

SEC. 153. 5th and lastly. The language of the treaty of 1783 infers that the boundary beyond, that is, to the west of, isle Royale, should turn to the south thereof.

The terms of the treaty, after mentioning the water communication between lakes Huron and Superior, are, "thence through lake Superior, northward of the isles Royale and Philipeaux."

If the Long lake to which the line is directed lay truly to the north of isle Royale, it would scarcely be necessary to specify its course as "*northward* of isle Royale," since that would be its natural track. But, as a line is particularly described, "through lake Superior, *northward* of isle Royale, &c., to the Long lake," it would be to charge the treaty with containing an absurdity, not to infer that the line, after it passes north of isle Royale, is to turn southward in its course towards the Lake of the Woods, and that it is rendered thus circuitous only for the purpose (whatever the motive may have been) of placing isle Royale within the limits of the United States.

If this inference be properly deduced, the boundary line can never be conducted through the Kamanistiquia river; for the mouth of that river, and every part of its course, and the Dog lake discharging by it, which is claimed by the American agent as Long lake, all lie entirely to the north of the northernmost part of isle Royale. Likewise, on the same supposition, that the above inference is correct, the boundary line must be conducted either through the route of the river St. Louis or the route of the Pigeon river; for no other river is known, discharging into lake Superior to the south of isle Royale, and forming a water communication with the Lake of the Woods, except the two already named; and the choice between these may be easily made, it is believed, from their comparative merits, set forth in this report.

SEC. 154. In addition to the *fivefold* grounds of the opinion of the undersigned, that the St. Louis river is the true course for the boundary, which have already been considered, the opinions of intelligent men upon this subject deserve to be noticed.

The eyes of the best-informed persons—nay, of all (except the American commissioner and agent) who have made a full acquaintance with these northwestern regions, and with the extensive mutual interests dependent upon them—have been directed to the Lake, or St. Louis river, as affording the true and proper course for this part of the boundary line.

SEC. 155. Comporting herewith are the sentiments of the honorable William McGillivray, expressed in his letter to the honorable John Hale, his Majesty's agent to this commission, as already quoted in section 101.

SEC. 156. The opinion of Sir Alexander Mackenzie, to the same effect, is contained in his Book of Voyages from Montreal to the Pacific Ocean, where that eminent traveller remarks: "Were it," [the boundary,] "to follow the principal waters to their source, it ought to keep through lake Superior to the river St. Louis, and follow that river to its source, close to which is the source of the waters falling into the river of Lac La Pluie, which is a common route of the Indians to the Lac du Bois," that is, the Lake of the Woods, where the boundary, under the 7th article of the treaty of Ghent, terminates.

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SEC. 157. This opinion last cited ought to have great weight with the United States, as the map and book of Mackenzie's Voyages have been referred to by the American agent as conclusive authority in support of some point in his claim.

SEC. 158. Before quitting this question, to wit, which of the several water communications named for that purpose forms the true course for the boundary between lake Superior and Lac La Pluie, there is one important fact to be noted, which, in the opinion of the undersigned, conclusively debars the United States from the benefit of any claim to the Kamanistiquia route, namely, *the want of a survey thereof*.

The maps furnished by the surveyors attached, on the part of the United States, to the commission, may be discriminated by their being signed by Mr. James Ferguson, as surveyor. The whole set produced by him, as signed by the commissioners, and exchanged for the use of the two Governments, amounts to but eight sheets, for twenty-four sheets, principally on the same scale, furnished by Mr. Thompson, the British surveyor. Not one of those eight contains any survey of the Kamanistiquia route, from lake Superior to the lake which connects this route (by means of Sturgeon river) with lake Saginewa and the Pigeon river route. Thus, in the route claimed by the United States for the boundary, there remain unsurveyed the Kamanistiquia river, Dog lake, Dog river, Savannah river, Mille Lac, (with its thousand islands,) Lac Dorado, Lac Winedago, Death lake, &c. Nearly all these waters are replete with islands, which afford so many insurmountable obstacles to the adjustment of the boundary, nay, even to the describing of a line, unless a most minute survey relieve from the intricacy.

SEC. 159. To account for the correctness of the outline of the general map referred to in section 126, as alone containing the Kamanistiquia route, (although the scale is too contracted for any practical purpose,) the undersigned declares that he firmly believes that such part of it was principally, if not entirely, (except the form of Dog lake,) derived from a map of a private survey made by Mr. Astronomer Thompson long before this commission was established; which map Mr. Thompson kindly presented to the undersigned for his information, and a copy of which the undersigned permitted to be made by some of the American party for their private use. The diminutiveness of its scale renders it entirely unfit to exhibit the delineation of a boundary, especially as it contains no representation of the islands.

SEC. 160. From this want of a survey of the Kamanistiquia route, in the extensive and important portions just specified, the undersigned deduces two conclusions:

1st. That the American officers of the commission never entertained a serious hope or intention of fixing the boundary in that route. The whole of their surveys are confined to the Pigeon river route, by two of its most circuitous and difficult courses, namely, the Arrow river and Sturgeon river.

2d. That it is now *impossible* to describe a line through this route, for want of a survey and of accurate maps. The omission of a survey leaves that defect of information which renders it impracticable to recite; and the want of maps produces that uncertainty which makes it impossible to delineate a boundary.

SEC. 161. It is particularly to be remarked that, independently on,

and in addition to, the entire difference of opinion entertained by the commissioners as to which of the several water communications herein named should form the true course for the boundary line, there is a marked distinction as to the manner in which they respectively propose to continue the line through any of the routes suggested; that the American commissioner describes the same, and wishes to establish it without reference to the portages, but continuing it (even where portages form a necessary link to complete the communication) along the course of the water, although the navigation of it be intercepted by vast falls, or rocky rapids, or shoals, and such insuperable obstructions; while the undersigned, commissioner of his Britannic Majesty, proposes in all these cases to conduct the boundary through and over the portages, so as to connect the broken line of water transportation and travelling. This difference forms the second question proposed (section 81) in this 4th part of the report, viz:

SEC. 162. 2d. Whether the portages are by any means to be preserved open and free for the use of both parties.

For the better understanding hereof, the undersigned begs leave to refer to the maps, and to the resolutions of the commissioners before set forth, (especially sections 17 and 18, and 20 to 24,) describing the points of agreement and those of disagreement between them.

SEC. 163. The difference of opinion in relation to the portages arises from the different construction given to the terms "water communication," used in the treaty of 1783; the commissioner of the United States contending that they mean the communication of the water, even of a trickling stream—that is, a continued *water line*; the undersigned believing, on the other hand, that the water affording communication for trade and travellers is intended.

SEC. 164. To the latter interpretation the commissioner of the United States objects, that a communication made up of water and land cannot be called a water communication. This position is contrary to general parlance; for it is well known, and to be observed every day, that any way for travellers takes its denomination of a *land* or a *water* communication from either element which may largely predominate. Thus, when a person is about taking the roads for Montreal, it is said he is going by land, although he must cross many waters, and among them the great river St. Lawrence, by water conveyance; and "vice versa," should he confine himself, generally, to the water of Hudson river and of lake Champlain, although links of land travelling be required to complete the communication.

SEC. 165. On the above view, the design of the treaty in these terms appears clear to the undersigned, to wit, to signify that a straight and *direct line*, between the two points specified, was not required for the boundary; but that the facility of the principal water communication was to be preserved for the accommodation of both parties, as far as the same might be susceptible of navigation, the intervals to be connected by land. This position is strengthened by the fact that it was well known, at the time the treaty was formed, that there existed no complete or entire (uninterrupted) water communication (such as suggested by the American commissioner) between lake Superior and the Lake of the Woods, but that every known water route between the two points mentioned was interrupted by a height of land, which renders a portage ne-

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cessary at such height, in order to connect the waters flowing southeastwardly into the Atlantic ocean with those running northwestwardly to Hudson's bay and the Pacific ocean.

SEC. 166. This well-known case of the unavoidable interruption of the water line, (which is the interpretation given by the American commissioner to the terms "water communication,") by the height of land, is decisive evidence that those terms were not intended to mean such a water line. Of what other meaning, then, are the terms "water communication" susceptible, except of that already suggested by the undersigned, namely, a *water passage* or *way* for trade and travellers?

As the commerce of this country, especially the fur trade, was considered of great importance, so of course to preserve the communication by which it must be carried on open to both nations must have been desired by both. But there can be no communication without the free use of the existing portages. In many places where portages are necessary, it is impracticable to establish them by any other roads than those which are at present in use, in consequence of the intervention of great mountains or of vast precipices of rock.

SEC. 167. To prove that the use of the portages is necessary to the completion of this water communication, recourse is again had to the testimony of Mr. Astronomer Thompson, (appendix, B,) as follows.

"By whatever route the canoes pass into the interior country, the full use of the present carrying-places is necessary for them, as, in several places, no other practicable carrying-places can be made in the present state of those countries, from natural obstacles; and this particularly on the Kamanistiquia route."

SEC. 168. The same gentleman deposes, (in his affidavit, letter A,) "that he conceives Pigeon river, below the west end of the Great Carrying-place, to be impracticable for the navigation of canoes, not only from what he has himself seen of it, and from the high, rocky, steep side of that river, but also from the disinterested accounts of those who have inspected this part of the Pigeon river, from its frequent falls, &c., having steep, high cliffs on each side, where no landing can be effected, and the adjacent country being extremely rocky and broken. In 1798 he geometrically measured the banks of lake Superior, in the bay of the Great Carrying-place, and found them 842 feet above the level of the lake; and he believes the Pigeon river, from the west end of the Great Carrying-place, must descend about two thirds of the above height, in a length of about eighteen miles, to its sortie into the lake."

SEC. 169. The undersigned begs leave to add his own testimony, (agreeing with the above,) derived from personal observations. In the summer of 1825 the undersigned visited the Pigeon river. In descending the river from the west end of the Grand Portage, he found a succession of falls (closely connected) as far as he could, without extreme labor and hazard, force his road; these falls were generally over perpendicular rocks, and measured severally (as was conjectured) from 25 to 45 feet in depth, being connected by rapids. The undersigned was informed by his canoe guide, an elderly French Canadian, that he had attempted (a year or more previously, when in the employ of the American surveyor under this commission) to convey a canoe from lake Superior, along the course of this river, to the west end of the Grand Portage; but that he found the object to be impracticable, from the succession of

falls in the river, and of precipices on shore, which continue from the west end of the Grand Portage till the river discharges into lake Superior.

As to the last fall of this river, about a mile from lake Superior, the undersigned testifies that it measures 78 feet perpendicular, the height having been ascertained by himself.

The object of the American surveyor in endeavoring to force a canoe along this route must be apparent, namely: to authorize an oath that this river was practicable for a canoe, without resort to the Grand Portage. After the failure of the above experiment, the undersigned is at a loss to know with what *authorized* meaning the American surveyor, Mr. Ferguson, could write on his maps, opposite this part of the Pigeon river, "navigable for canoes." But the fact is so; and the undersigned offers it in extenuation of this introduction of his own evidence and of that of the guide.

SEC. 170. It appears superfluous to add further evidence to this point. The mere fact of the existence of portages proves the indispensable necessity of them. As the convenience attending the enjoyment of them is mutual, so would be the inconvenience consequent upon the establishment of the boundary through them, as they lie at one time on this side, at another on that side, of the water communication, and thus interfere equally with the territory of both parties. The undersigned, therefore, can scarcely be presumed to make any proposition for the rendering of the portages free to both, except from a conviction that it was the intention of the negotiators of the treaty of 1783, in mentioning a "water communication" to the Lake of the Woods, that the boundary line was to be established in a practicable communication.

In fact, whatever water communication may be fixed on for the general course of the boundary, the omission to make the portages free to the people of both Governments would amount to the exclusion of both from ingress and egress by that direction.

SEC. 171. In connexion with this subject of portages, the undersigned, having submitted the original direct opinions of both the commissioners, with the grounds of his individual sentiments in relation thereto, now proposes to relate certain suggestions made by the commissioners, mutually, for a compromise of the differences existing between them in regard to this part of the boundary. Certain of these suggestions being set forth at length in the 20th to the 24th sections of this report, as copied from the journal of the board, such sections are referred to for so much of the particulars as may be therein contained.

SEC. 172. It will there appear that the commissioner of the United States proposed to the British commissioner, "that, in regard to their differences respecting the boundary between lake Superior and the Chaudiere falls in Lac La Pluie, (St. George's island being first appropriated to the United States,) they should both relinquish the lines which they had respectively assumed, and adopt, in lieu thereof, the following route, namely: Beginning at the point in lake Superior described as 100 yards distant from the island called Chapeau, near the northeast end of isle Royale; and proceeding thence, to the mouth of the Pigeon river, on the northwestern shore of the lake, enter and ascend the middle of that river, and, leaving it at its junction with Arrow river, proceed to lake Namecan and Lac La Pluie by the most direct and most continuous water commu-

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nication, as delineated on the reduced map on the files of this board, to which reference was already made."

SEC. 173. "The British commissioner, on the other hand, still maintaining the claim of Great Britain to St. George's island, and to the establishment of the boundary line through the Middle Neebish and the Sugar rapids, as before set forth, stated to his colleague the necessity of his adherence to the same, as he considered that the application of the same principles which, under the 6th article of the treaty of Ghent, appropriated Barnhart's island in the St. Lawrence, and the islands at the head of lake St. Clair, lying between the boundary line, as there settled, and the American main shore, to the United States, would in this instance require St. George's island to be allotted to Great Britain. Mr. Barclay, however, impressed with the propriety not only of dividing the doubtful territory between the two Governments, but also of preserving the navigation free to both nations, proposed to stipulate with the American commissioner, upon condition of his agreeing to fix the boundary in the Middle Neebish and Sugar rapids, and to allot St. George's island to Great Britain, that the channel through the East Neebish and lake George should remain free for the fair and lawful commerce of both nations; provided the commissioner of the United States would guaranty the like with respect to the channel running on the southeast side of Barnhart's island, and to that channel through the islands of lake St. Clair which is contiguous to the American main land, and which is commonly used, because it is the easiest and safest. And as to the proposition of Mr. Porter, to conduct the line from lake Superior to the mouth of Pigeon river, thence, through the middle of said river, proceeding to lake La Pluie by the most direct and continuous water communication, Mr. Barclay consented to adopt a route from lake Superior, by the Grand Portage, to Pigeon river; and thence, by the most easy and direct route to Lac La Pluie, provided the American commissioner would consent that the boundary should be conducted from water to water, over land, through the middle of the old and accustomed portages, in those places where, from falls, rapids, shallows, or any other obstruction, the navigation and access into the interior by water are rendered impracticable. Such a route, with all the portages, is here described by Mr. Barclay, for greater certainty;" the particulars of which route will be seen in the section last referred to.

SEC. 174. It is here to be observed, that when, in the above proposition of the British commissioner, the channel "on the east side of Barnhart's island" is mentioned, (meaning the channel between that island and the American main shore,) those terms are to be considered as descriptive of the particular channel intended, not as restrictive of the extent of what is referred to; and that channel is alluded to "*in extenso*," as far as it passes within the American line.

SEC. 175. The commissioner of the United States having declined accepting the modification of his proposal for a compromise, as above set forth, the undersigned shortly after made another proposition to him, to the following effect: That, for the purpose of effecting a compromise, an object so desirable to both parties, the undersigned would consent to relinquish the proposed establishment of the boundary through and over the middle of the portages, and to fix it as a water line in the course of

the water communications described for that purpose by the undersigned ; provided he (the American commissioner) would unite in declaring the portages common and free to the lawful use of both nations, the undersigned always alleging that he deemed it a part of the duty of the commissioners to preserve the communication open.

This proposition also was lately declined by the commissioner of the United States, by the advice (as he stated) of his Government.

SEC. 176. To recapitulate briefly : It appears, from what has been stated, that three principal propositions were made, between the commissioners, in relation to this part of the boundary, and affecting the topic of portages. 1st. The American commissioner wished to fix the line along the *middle of the water*, even where it ceased to be navigable, in consequence of falls, shoals, or other obstructions. 2d. That the undersigned desired, in case of any such obstructions, to preserve the communication open to the people of both nations, by conducting the line through the middle of the portages, from water to water. 3d. That, on the last proposition being rejected by the American commissioner, the undersigned consented to fix the line (other differences, especially as to the route to be adopted, being first adjusted) in the middle of the water, through all parts, according to the proposition first enumerated, as made by the commissioner of the United States, provided that commissioner would agree to declare the portages on both sides to be common and free for the lawful use of both nations.

SEC. 177. As it is impossible to anticipate what consideration may hereafter be given to these suggestions of compromise, the undersigned would particularly advert to two variations of the course described by the American commissioner, from that described by the undersigned, for this purpose. The course described by the undersigned is, throughout, the old commercial route, and the route invariably used by the traders, who enter or return by the Grand Portage and Pigeon river. But the water communication from lake Ka-sagenaga, by Sturgeon river, to the Sturgeon lake, and the deviation, by the Arrow river and Arrow lake, from the main route, are difficult and but little known. They are never practised except by those solitary traders who are independent of companies, and who hope by these retired channels to enjoy a little trade, where their interference with the chartered company may escape molestation.

SEC. 178. In evidence of these allegations, the undersigned again appeals to the testimony of the experienced astronomer of this commission, (to which none equal can be procured,) contained in the appendix, A. He says :

"The route from lake Ka-sagenaga to the Sturgeon lake was never known to or practised by the fur traders, except many years ago, to the people of one or two canoes, who collected furs on these waters. The Arrow river, from what I saw of it, is too shoal to be a route for loaded canoes."

SEC. 179. With this opinion, as far as it relates to Arrow river, agrees the map of that river made by Mr. Ferguson, the American surveyor, and signed by the commissioners. On that map he states the stream mentioned to be a *continued rapid*.

SEC. 180. In fact it is too notorious to require proof, among persons in the least acquainted with these waters, that neither the Arrow river

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nor the Sturgeon river is an accustomed route: the reason assigned is, that they are both more devious, and both attended with greater obstacles, than is the common route.

SEC. 181. If the opinion of the undersigned be allowed, that the Lake, or St. Louis river, is the true course for the boundary, then there appears no difficulty in respect to the direction which the line is to pursue from lake Superior to that point in Lac La Pluie at which the differences of opinion cease between the commissioners of the respective Governments; for it is not pretended that there are two routes from lake Superior, by the Lake, or St. Louis river, to Lac La Pluie. There is but one with which this commission has been made acquainted. That one is, and long has been, well known by common report; and is now familiarly and minutely known by means of the survey thereof ordered under this commission, and executed by one of the surveyors employed by the board; which survey is delineated with great exactness on the maps signed and certified by the commissioners. In conformity with such survey and the maps thereof, the undersigned has described with great detail, (in the statement of the points of agreement and of difference between the commissioners, entered upon their journal,) the course which he considers and urges as the true direction of the boundary line from lake Superior, through the Lake, or St. Louis river, the Rivière des Embarras, the Little Vermillion river, Vermillion lake, Great Vermillion river, Crane lake, Sand Point lake, and lake Namecan, to that point in Lac La Pluie, from which to the most northwestern point of the Lake of the Woods the commissioners have agreed. Every portage, also, upon this route, has been named and particularly described, with the length thereof; the islands, also, are all designated by numbers, both on the maps, and in the description of the boundary claimed by the undersigned in behalf of his Government. The line there described proceeds upon the principles set forth in this report, and is as nearly as possible equidistant from the respective main shores. It is set forth in such a manner as cannot be mistaken, and it can be drawn upon the maps with such certainty as to leave no possibility of doubt, so that no farther or future survey would be required.

For greater clearness, the undersigned begs to refer to the maps, and to the description contained in the journal of the board, under date of October 23, 1826, of which a transcript will be found in the 18th section of this report.

SEC. 182. That the commissioner of the United States has not used such precision in his descriptions, upon the journal, of the boundary urged by him between the two points above specified, will appear from those descriptions, of which also a transcript will be found, commencing at section 17 of this report. They merely recite the names of the water communications through which he desires the boundary to be conducted; but the precise course thereof in relation to the innumerable islands is not specified, nor are any of those islands designated by *numbers*, or otherwise. It was impossible, indeed, that he could be so particular as was necessary, for want of an actual survey. In fact, his claim remains entirely uncertain, as to all the islands contained in the water communications named by him, in relation to this part of the boundary. The same allegation, as to want of minuteness and certainty, applies to that route, which he proposed as a compromise, by the Pigeon river, (whereas

the undersigned has described every portage upon this line also, as it is specified by him ;) and the undersigned ventures to urge that this defect alone, if there existed no other objection, should prove fatal to the claims set up on the part of the United States. For it was the bounden duty of the commissioners appointed by the respective Governments to determine this boundary, to ascertain, describe, make known, and report, all the facts and circumstances necessary to a final adjustment thereof: forasmuch as the treaty of Ghent provides that the umpire therein mentioned "shall be requested to decide on the differences which may be stated in the said report or reports," namely, of the commissioners. If either party has failed to be so full and circumstantial, it is reasonable to conclude that he could discover no particulars favorable to his cause. Should this not be the reason of the deficiency in his claim and report, the same can be ascribed only to neglect ; and surely he and his Government are not to be allowed the benefit in either case, to the injury of the adverse party, which, from the omission, has been deprived of the opportunity of defence and resistance. Nor should any subsequent supplementary matter be allowed an introduction, which might call for or require farther surveys. All surveys have been closed, and the surveyors generally have been paid off. The surveys which have been performed were effected at vast expense to both Governments. On behalf of Great Britain, men of talents were engaged, some of them brought from Europe at great cost and salary, defrayed exclusively by that Government. They will *all* have been discharged when these reports may be delivered, and it cannot be possible that the neglect or sinister design (if such a disposition can exist) of either party will be permitted to renew such expense and trouble to the other party.

SEC. 183. On the other hand, to conclude this part of the report: If the undersigned should be deemed not to have succeeded in showing satisfactorily that the St. Louis river, and the water communications described from it to the Lac La Pluie, ought to be established as the course for the boundary, he begs leave to urge that, at all events, the Kamanistiquia river, and its water communication, should *not* be adopted.

Besides the defect in the inherent qualifications of this route, compared with that of the St. Louis river, as already shown, there are two abstract objections to the conducting of the line by the way of the Kamanistiquia river, namely, the want of a survey of that entire water communication, and the discrepancy of that course from the former claim to the Pigeon river route, twice solemnly made in behalf of the United States. The first of these has already been enlarged upon. With respect to the second, it is humbly yet confidently hoped that, should all the other arguments be set aside, the versatility of the American agent (with whom the American commissioner went "*pari passu*" in vacillancy) will here be checked ; that his repeated formal claim to the Pigeon river as a boundary, supported by a file of evidence, and the proposition of the commissioner of the United States to compromise for that river, will be required to be accomplished, (under the modification, however, offered by the undersigned, with regard to the Arrow river and Sturgeon river,) if the St. Louis river be not accepted ; and, whichever of the two routes be fixed on, he desires to impress the importance of rendering the portages by some means free to the lawful commerce and passage of the people of both nations, either by conducting the boundary line through

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the middle of the portages, where they occur, or by declaring the portages common to both, should the line be actually continued through the unnavigable portions of the waters.

PART V.

SEC. 184. From the point before specified, at the entrance from lake Namecan into Lac La Pluie, to the most northwestern point of the Lake of the Woods, the commissioners amicably adjusted the line. Before proceeding, however, to the examination of the general memorial of the American agent, the undersigned will communicate the manner in which the most northwestern point of the Lake of the Woods was ascertained and determined.

SEC. 185. Previously to the month of May, 1825, no satisfactory answers having been obtained in the United States to the apparently simple questions—what is the most northwestern point of a lake? and how is it to be ascertained?—the undersigned privately caused the subject to be referred to Dr. John Lewis Tiarks, an astronomer of eminence, who had previously been employed by his Majesty's Government to act under the 5th article of the treaty of Ghent, and was deputed to act also (if required) under the commission of which the undersigned has the direction assigned him in behalf of his Majesty.

On application being made to that scientific gentleman (then in Europe) for the definition of a most northwestern point of a lake, he gave the following reply:

"The most northwestern point of a lake is that point which has the following property, viz: that if a loxodromic line, intersecting each meridian in the direction from southwest to northeast, at an angle of 45 degrees, be drawn from it, and such line be continued both ways, until its intersection with the meridian of the extreme east and west points of the lake, it (the loxodromic line) shall touch no other water of the lake."

SEC. 186. In the spring of 1825 Dr. Tiarks came from Europe to the United States, and proceeded with the undersigned to the Lake of the Woods, expressly with the view of settling this point.

After spending several weeks in the Lake of the Woods, for the purpose above mentioned, Dr. Tiarks closed his observation there by making a luminous, satisfactory, and conclusive report, which was presented in evidence by his Majesty's agent to this commission, and ordered to be put on the files of the board in October, 1826.

The most northwestern point of the Lake of the Woods (as mentioned with its latitude and longitude in section 19) was determined by the commissioners, in conformity to that report of Dr. Tiarks.

PART VI.

SEC. 187. The undersigned now proceeds to examine the claims made by the agent of the United States, in behalf of his Government, to the several controverted portions of this boundary, as probably furnishing the prominent arguments to be adopted by the commissioner of the United States in his report.

SEC. 188. The principal memorial of the American agent in support of

his claims was filed at the board on the 5th October, 1826. It sets out with observing, (page 1, of copy containing 42 pages :)

"It is remarkable that the definitive treaty of 1783 does not describe the boundary lines passing through the middle of the St. Mary's river; that part of the treaty which relates to it reads: thence, along the middle of the said water communication, (meaning the Detroit and St. Clair rivers and lake,) into lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior; thence, through lake Superior," &c. He proceeds: "In lake Superior, the rights of the United States are expressly enlarged by the line being carried far to the northward of a middle line; and the suggestion is submitted, whether by this omission it was not intended that the water communication between lakes Huron and Superior should be considered as part of lake Superior, and that the islands in this river, like those in lake Superior, should chiefly belong to the United States."

SEC. 189. This ingenious effort at argument savors too much of burlesque to merit serious reply. It must be refuted, however, lest by the friends of such ingenuity it be taken "*pro confesso*." The answer is brief, although threefold; the first part drawn from the terms above quoted, by the American agent, from the treaty of 1783. That treaty expressly mentions a water communication between lakes Huron and Superior, as distinct from either of those lakes; and before an attempt was made to confound two subjects which a treaty had distinguished by marked discrimination, (those two subjects, also not impalpable, metaphysical, or immaterial, but forming large and substantial features of the globe we inhabit,) there should have been shown us some new rule of interpretation.

SEC. 190. The second part of the answer is derived from the geography of the region in question. At the Sault de St. Marie the water communication becomes very contracted, the river itself very shallow, the current violent, and nature herself has, by the sault or falls, separated the waters above from those below. Had it been convenient for the American interest to argue that the waters below the Sault de St. Marie, in which the disputed island of St. George is situated, actually constitute a part of lake Huron, the claim could be argued with much better grace; for the river expands as soon as it reaches the island, it continues very very broad until it arrives at the open waters of lake Huron, and it would undoubtedly form a part, and a large part, of that lake, if the islands (which separate its channels) were removed. From this place (the Sault) to the Gros Cap, where the waters expand into the great lake Superior, being a distance of 14 miles, the river continues contracted, with the exception of one bay, so that it has no pretensions to be considered a part of the lake; and there is no island in the whole distance, at least none worthy of notice, or at all questionable.

SEC. 191. The third part of the reply to this ingenious attempt is this: that old established names, properly applied, can never be allowed to be arbitrarily changed to suit the interest of a party or of a particular occasion. It is a notorious fact that the water communication between lakes Huron and Superior has been known, time out of mind, or from the first French memorials, the earliest records of the country, as La Rivière de St. Marie.

SEC. 192. But the agent of the United States having displayed his in-

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genuity in conceiving and giving birth to this argument, liberally consents to relinquish the great benefit of his travail, and that "the right to this island" (St. George's) "be decided as if the treaty description had been uniform, and in this instance also had conducted the boundary through the middle of the river"—in proof (as he states) "of his disposition to avoid *unreasonable claims*." The American agent then adds, that "with these premises he begs leave to refer to the map of the St. Marie's river, protracted by the surveyors. It is there seen that the lake George, so called, on the east or British side of the island, is larger than the river on its west or American side; that the greatest proportion of the island lies nearest to the American shore; and that the greatest superficies or width of the lake or river are next to the Canada shore. These facts are all proved by the map of our own surveys. Therefore, adopting the rule of decision heretofore strenuously insisted upon by his Britannic Majesty's agent, that the middle of a river is to be ascertained by superficial measurement from the two shores, and admitting, too, '*ex gratia*,' for the sake of an application of his rule, that the line is to pass *through the middle*, the island lies within the limits of the United States."

SEC. 193. The undersigned, willing, in behalf of his Government, to rest its rights to St. George's island, and to a boundary line through the Middle Neebish, upon the admission of the agent of the United States that the line shall be conducted equidistant from the respective main shores, and that the island shall be appropriated to that Government on whose side of such equidistant middle line the largest portion may lie. The undersigned differs "*in toto*," however, from the American agent in the allegation made by him, "that the greatest portion of the island lies nearest to the American shore," &c. To evince how well authorized the undersigned is to express this variance of his opinion from that of the American agent, he here repeats a part of the affidavit (marked B, in the appendix) of David Thompson, Esq., one of the astronomers and principal surveyors employed by the commissioners, in reference to this point. It is to the following effect: "St. George's island, intersected by a line as near as possible equidistant from the opposite main shores, has its greatest part on the British side of this said line."

SEC. 194. To this general affidavit the undersigned begs leave to add the specific calculation and report of the entire area of St. George's island, and of the parts lying upon either side of the middle line made by Mr. Thompson, (and set forth in the appendix to this report, under letter S.) It is not sworn to, that formality being considered unnecessary, in consideration of the oath of office taken by Mr. Thompson to act with fidelity and impartiality in his official duties. The report was, however, signed by him, and is certified by the assistant secretary to be in his handwriting. It is as follows:

"St. George's island, near the falls of St. Marie, contains—				
Total area in square miles	-	-	-	37.4332
British area in square miles	-	-	-	20.8202
American area in square miles	-	-	-	16.6230
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Difference in square miles	-	-	-	4.1972

Total area in square acres	-	-	-	23,964
British area in square acres	-	-	-	13,325
American area in square acres	-	-	-	10,639
Difference in square acres	-	-	-	<u>2,686</u>

"DAVID THOMPSON.

"OCTOBER 21, 1826."

SEC. 195. In reference to this report, the undersigned would now only add a brief comparison of the evidence adduced upon the point in question in behalf of the American claim, with that submitted in behalf of Great Britain. The former is the mere assertion of the agent of the United States, offered, moreover, at a time when he could have provided himself with the oral testimony, or with the affidavits, if he preferred them, of all the surveyors employed by either party, who were at that time in attendance at the board. It must be observed, also, that this omission did not proceed from neglect; for, upon all other points, the American agent was careful to procure his evidence in a formal manner; and, in the very next paragraph to that above quoted from his argument, he introduces an affidavit of Mr. Ferguson, another of the principal surveyors, in relation to the channels on either side of this St. George's island. On his omitting to include Mr. Ferguson's testimony to the fact of the comparative distance of the mass of St. George's island from the respective main shores, what is to be inferred? That Mr. Ferguson could not conscientiously testify to the fact alleged and required to be proved by the American agent.

SEC. 196. What, on the other hand, is the authority of the evidence given in behalf of Great Britain? It is of the highest description which the case would allow. There were the oral allegations of Mr. Thompson (a sworn surveyor) at the board of this commission, which were known to all parties. There is his general testimony to the same point, consolidated in his affidavit above recited. There is his report of the total area and of the two portions, divided by a middle line, of St. George's island. Mr. Thompson is a gentleman of experience and ability. He spent sixteen years in the countries northwest of lake Superior, engaged professionally as an astronomer and surveyor; subsequently he was appointed to serve this commission at its first establishment, in the same capacity, in which he has continued for ten years, to the satisfaction of all parties. His accurate surveys evince his ability; as for his credibility, the very admission of him to the appointment he holds should be a sufficient testimonial. To which may be added, that the strongest approbation of his general character is expressed by his having executed many years, and still holding, the office of magistrate in the county where he dwells.

SEC. 197. If any objection be made to the testimony of the surveyors, introduced in various parts of this report, on the ground that the same was sworn to since the arguments upon the subject were closed, and that it was not put on the files of the board, the answer is plain.

In the journal of the board for the 1st November, 1825, the following order is contained:

"Resolved, That such written documents as the agents of the respective Governments intend to submit as evidence in support of their claims,

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(excepting the maps of the surveyors in the employ of this commission,) be first duly authenticated, agreeably to the forms and usage of the country in which the same are procured."

SEC. 198. Here it is to be observed that the introduction of unwritten evidence must also have been intended by the commissioners, as is to be inferred by the specific limitation of this order to the manner of taking the *written evidence*, and not requiring all evidence to be in writing, and authenticated as there directed. Thus the maps of the surveyors, and, of course, their calculations upon the same, are excepted. Among other unwritten evidence contemplated to be received, no doubt the oral testimony of the surveyors stood first. They were sworn to fidelity, impartiality, and truth, when appointed. In conformity to this view, it was the prevailing custom, when any question of fact in relation to the boundary occurred at the board, to call upon the surveyors for their oral testimony.

SEC. 199. After such testimony had been given at the board, and the commissioners concluded that their differences could not be accommodated, it became necessary that formal affidavits or reports, signed by the same surveyors, and certified by one of the secretaries of the board, should be procured, in order that the matter testified by them might be communicated in the reports required to be made to the two Governments, without incurring liability to the charge that the undersigned had not related their testimony truly.

This narrative will account for the causes why such affidavits and reports were not filed in writing at the board, and why it was thought necessary to procure them subsequently.

SEC. 200. The American agent remarks, (page 2:) "It is contended that the more legal rule of decision, viz: that the middle of a river is controlled by its channel or greatest depth of water, should prevail." It is elsewhere shown, in this report, that such rule was totally disregarded under this commission, in consequence whereof the Upper and Lower Long Sault islands, and Barnhart's island, also half of the islands of lake St. Clair, were lost to Great Britain.

SEC. 201. The agent of the United States next produces an affidavit of Mr. Ferguson, the American surveyor, to show that the principal channel lies on the east or British side of St. George's island. This is not denied, as far as the term *principal* applies to depth; but, in respect to width and body of water, it is not admitted. The undersigned cannot omit here to introduce again the testimony of Mr. Astronomer Thompson, (see appendix, B,) upon the sufficiency and advantages of the Middle Neebish channel, which runs on the west side of St. George's island. It is to the following effect:

"That, in general, the Middle Neebish channel and Sugar rapids have good depth of water, sufficient for the heaviest loaded batteaux and canoes; and this Middle Neebish channel and Sugar rapids are always preferred, by such craft, to the other two channels; that the passage by this Middle Neebish channel is shorter by ten and a half statute miles than that of the East Neebish channel, and less exposed in gales of wind."

SEC. 202. The American agent, in commencing his argument in support of his claim to certain islands in lake Superior, and especially to the isle Pâté, and others, as being the isles Philipeaux intended by the treaty,

remarks that "isle Royale is as well known as the lake itself. No doubt has ever existed as to the identity of isle Royale."

This argument, derived from the weighty authority of *general repute* among the best-informed persons, has already been employed by the undersigned in the course of this report; and he is happy to find the American agent give his assent to it. He says "no doubt has ever existed as to the identity of isle Royale;" and the undersigned alleges that *no doubt has ever existed as to the nonentity of the isles Philipeaux*. From the earliest acquaintance which the undersigned made with these regions, and after the most careful investigation and personal examination, he has always been informed, and is fully convinced, that there were never any islands in lake Superior known as the isles Philipeaux, and that there are no such islands as are represented by that name on the maps. All the islands in lake Superior have their appropriate names; names known as attached to them from the earliest recollection, being either Indian or French; and some of these names are those which the American agent desires to expunge, in order to substitute the appellation of isles Philipeaux. With what view? it may be asked. Because, if the isle Pâté, and others in the same bay, could be made to appear to be the isles Philipeaux, the course of the line by the Kamanistiquia river would be tolerably well secured for the United States, since those islands are so near to the mouth of the Kamanistiquia river, and to the northwest shore of the lake, as scarcely to leave a doubt, after the line shall have been conducted to the north of them, that it should terminate its lake route in this bay by entering the Kamanistiquia river; but it may as well be contended that isle Royale is a misnomer. There is no doubt that the French appellation of isle Pâté is of equal antiquity, and that it was affixed to that island when the French took possession, or, at all events, before they lost the dominion of Canada.

SEC. 203. In Mr. Astronomer Thompson's affidavit A will be found the following negative testimony, in point upon the present occasion.

"That he" (the deponent) "was frequently in company with one of the French gentlemen who carried on the fur trade at the conquest of Canada, an intelligent person; and the deponent, to the best of his memory, never learnt or heard from this French gentleman (Monsieur Réaume) that isle Pâté was one of the isles Philipeaux. The Canadians name this island La Pâté, from its high, steep cliffs, apparent round form, and isolated position."

SEC. 204. The American agent, while on this subject in his before-mentioned argument, acknowledges "that the experience of all persons attached to this commission will satisfy the board that no islands of this name (Philipeaux) are now known to the oldest voyageurs and traders." If any real islands ever were known by this name since the French settlement of Canada, is it possible that they should be immersed into perfect and perpetual oblivion, while for three quarters of a century the name of them has been made a prominent object of general observation, and of national interest in maps and treaties?

SEC. 205. In pursuance of the expression of the treaty, "northward of isles Royale and Philipeaux," the American agent argues that all the islands south "of isles Royale and Philipeaux, and it is presumed that it will not be denied that all of the islands south of a line drawn from the St. Marie's to the northward of isles Royale and Philipeaux, do consequently belong to the United States."

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SEC. 206. This position would unquestionably be controverted by the undersigned, but it becomes unnecessary to argue it, in consequence of the isle Caribœuf (to which the American agent intended it to be applied) having been appropriated to Great Britain by the consent of the commissioner of the United States, the boundary line having been drawn so far through lake Superior in a course equidistant between the respective main shores.

SEC. 207. It may be remarked, in explanation of the fact of the British commissioner who negotiated the treaty of 1783 having consented to cede isles Royale and Philipeaux to the United States, that the latter Power was at that time very desirous of extending its territory as far as possible; that its Government was then less acquainted with the Canadas than the British Government was; that the United States supposed the islands above mentioned to be worth attaining, while the British Government knew them (as far as they were known in isle Royale) to be worthless. Great Britain, therefore, agreed to yield them, as a great boon requested of her, and consented to run the line, in a curved manner, *northward*, so as to include them within the American line.

SEC. 208. The American agent, while arguing his claim to the isles Pâté and Menon, as being the isles Philipeaux mentioned in the treaty, observes that "it must be admitted that isles Philipeaux had some definite place in the minds of the negotiators of the treaty of 1783," and that "he regrets it is not in his power to offer, in evidence, the same documents which guided them." This singular implied assertion, "that it is not in his power to offer in evidence the same documents which guided" the negotiators of the treaty of 1783, will appear to proceed either from a remarkable forgetfulness in the American agent, or from an ill-founded opinion that such remarkable forgetfulness exists in the officers of the British commission; for the memorial of the said agent, presented on the 28th of October, 1824, and filed by order of the board, (which was a repetition of one presented by the same agent in February of that year,) was accompanied by several documents, formally prepared, and offered in evidence, to prove that Mitchell's map was that which was used by both American and British commissioners through the whole of the negotiation; and he was then possessed of the very map (namely, Mitchell's) which the American commissioners had employed, and upon which the intended boundary was marked by them as agreed upon.

That memorial and the evidence are set forth in the appendix to this report, under the letter H.

Mitchell's map lays down the isles Philipeaux near the east end of isle Royale.

To effect his object, then, of fixing upon the isle Pâté and its neighbors the name of isles Philipeaux, the American agent asks but a single and moderate liberty:

1st. To abandon the map used by the negotiators, upon the adoption of which he formerly insisted, as the sole authority;

2d. To remove the position of the isles Philipeaux a little distance, that is, from the east end of isle Royale far beyond the northwest extremity of that island, being about sixty or seventy miles;

3d. To annul old established names, and to substitute new;

4th. To give authority to maps which never possessed any, as appears from the gross errors upon the face of them, and which were published

when no accurate knowledge of the regions in question could be procured, except from those who inhabited or who had visited them.

SEC. 209. The undersigned is persuaded that neither all nor any of these extravagant propositions, so contrary to reason and conscience, will be allowed by any umpire to whom these differences may be referred; and that as much credit will be allowed to the agent of the United States for the boldness as for the ingenuity of his suggestions.

SEC. 210. With regard to all the maps of the countries through which this boundary is destined to pass, published not only anterior to the treaty of 1783, but even down to the date of the treaty of Ghent in 1814, and until the establishment of this commission, the undersigned alleges that they are not conclusive authority upon any one point; in proof of which he depends upon two facts:

1st. That surveys of parts hereof were expressly required to be made by the treaty of Ghent, and that the remaining parts the commissioners deemed it necessary to survey, in conformity to the discretion given them by said treaty. Hereby the opinions, both of the commissioners who negotiated the treaty of Ghent, and of the commissioners appointed to fix the boundary in compliance therewith, are manifested, that the existing maps could not be depended upon.

2d. That one and all of the maps of the countries in question, published prior to the surveys of this commission, are grossly erroneous upon the face of them. Of this fact the undersigned will adduce no other evidence than may arise from a comparison of any other maps with the accurate authenticated maps of the surveys of this commission. Nor does there appear any reason why the least confidence should be reposed in former maps. They were not the result of Government surveys; and none but a national exchequer could sustain the expense of a regular survey in these remote, *uncivilized*, and inhospitable latitudes, whither not only the necessities of life must be transported with the traveller from afar, at great expense, but the *means* of transportation also. How, then, it may be asked, did those maps gain any resemblance to the true face of the regions they purport to delineate? The undersigned has witnessed, as every other traveller in these quarters may have witnessed, the manner in which this general resemblance is effected. The inquisitive traders or clerks, in performing these voyages, with the hope of improving their knowledge of the geography of the country, sketched from the eye as they proceeded. What could not be seen by them was frequently connected in their sketches with what they had seen, by means of the narratives of other persons, either white men or Indians, who might be inquired of to state what they knew. These sketches found their way into map-makers' hands, and were published, with the best puff they could invent, to give a little reputation. The sketch-maker dubbed himself "captain," to lend probability to his survey, and procured the "geographer to the King" to stand sponsor for his bantling.

SEC. 211. The next argument of the American agent, with a view to give body to the isles Philipeaux, and to fix them to the north and west of isle Royale, is as follows: "It (the treaty) reads, thence to the northward of isles Royale and Philipeaux." "The boundary line description recites the names of places in their consecutive order, with the utmost regularity," &c. "In no instance are their geographical positions reversed. Progressing, therefore, from the eastward, over lake Superior,

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is not the isle Royale of the treaty approached before the isles Philippeaux?"

SEC. 212. To this the undersigned answers: 1st. That the American agent having shown by his said memorial, with evidence, filed on the 23th October, 1824, and set forth in appendix hereto, under letter H, that it was Mitchell's map which was employed by the negotiators of the treaty of 1783, and that map having the isles Philippeaux fixed to the east of isle Royale, the inferences are, that the negotiators must have considered that map as accurate as any they could procure, and that the precedence given to isle Royale, while the map under their eyes placed the isles Philippeaux farthest east, probably arose from the fact that isle Royale being well known, while the existence of the isles Philippeaux was (to say the least) doubtful, they gave precedence to that which was known to be real, and assigned a secondary station to that which, for aught that was known, was imaginary; intending, however, to assign to the United States such islands as were laid down on Mitchell's map under the name of isles Philippeaux, if in existence.

2d. That those negotiators gave no credit to any maps, surveys, or reports, and felt no confidence in the information thence derived relative to the countries through which this boundary was to pass. If the knowledge already possessed by them, or within their reach, was accurate, and, in their opinion, sufficient, it would have been more fit that they should at that time definitively fix the boundary, than leave it as a source for future litigation and expense, and a subject to be referred to future commissioners. The same remarks apply to the commissioners who negotiated the treaty of Ghent; they, too, notwithstanding the accumulation of knowledge which the lapse of thirty-one years must be supposed generally to leave behind, still thought there existed such a deficiency of information upon the subject of these boundaries, that they declined to settle the same by the said treaty, and thought it expedient to refer the whole matter to several boards of commissioners, organized with numerous subordinate officers, and with powers to examine, survey, observe, report, argue, and determine, as if the subject in hand were yet entirely "*in obscurum*!"

SEC. 213. In conformity to this reasoning, as the 4th, 5th, 6th, and 7th articles of the treaty of Ghent relate to four distinct portions of this boundary, and to the commissions by which the same were to be respectively settled, so all of them (with the exception of the first of the four, which has reference to a mere question of chartered rights) direct surveys to be made, and expressly signify the defects there existing.

SEC. 214. Thus, the 5th article states: "Whereas neither that point of the highlands," &c., "has yet been ascertained," &c.; "and whereas that part of the boundary line," &c., "from the source of the river St. Croix," &c. &c., "until it strikes the river Iroquois or Cataraguy, has not yet been surveyed," &c. &c., "the said commissioners shall have power," &c. &c., "and shall cause the boundary aforesaid," "to be surveyed and marked," and "shall make a map of the said boundary."

SEC. 215. The 6th article states: "Whereas doubts have arisen," &c., "in order, therefore, finally to decide these doubts, they shall be referred to two commissioners, to be appointed, sworn, and authorized to act, exactly in the manner directed with respect to those mentioned in the next preceding article."

SEC. 216. Under the 7th article the commissioners are directed "to cause such parts of the said boundary as require it to be *surveyed* and marked;" and they deemed it necessary to have the *whole* surveyed.

SEC. 217. The undersigned appeals to the common sense of any reasonable individual, whether all former maps and information are not entirely rejected by the plenipotentiaries of the two Governments in these expressions employed by them: "has not been ascertained," "has not yet been surveyed," and "the said commissioners shall cause the same to be surveyed," and "shall make a map thereof."

SEC. 218. In order to prove the Kamanistiquia river to be the true course for the boundary, the American agent next states that "Charlevoix, who made a voyage over the lakes in 1721, has on his map a French fort at the mouth of the Kamanistiquia; and Mackenzie, who was there in 1789, states that the Kamanistiquia is the old road."

SEC. 219. It is by no means improbable that there was of old a French fort (a retreat from the Indians) at the mouth of the Kamanistiquia; for it is a fact, notorious to every person who has made the voyage of lake Superior, that as the Indians enter all parts of the surrounding country, and return by the rivers, for the convenience of canoe navigation, to transport themselves, their wigwams, (or tents,) and their furs, so the white traders erected their establishments at the mouths of almost all of these rivers, to facilitate their exchange of merchandise for furs, and to afford protection from the Indians while engaged in this occupation. This was the case, and continues at the present day, in some rivers by which the white traders have no extensive communication into the interior. Thus, in ascending from the river St. Mary, along the north shore of lake Superior, there is a fort at Michissicoten river; another at the Peak river; there was formerly another at the Mines; another is at Nepigon river; another at Kamanistiquia river; another was placed at the Pigeon river, above the fall, at the west end of the Grand Portage; another, in decay, marks the ancient route of the Lake, or St. Louis river, as appears on the maps.

SEC. 220. Whether the Kamanistiquia, therefore, was or was not a route for the white traders into the interior, is not proved by the fact of a fort being there situated. It would have been contrary to general practice not to place a fort at the mouth of that river, or of any other by which the Indians descended and ascended.

As to the evidence of Mackenzie, that the Kamanistiquia is called the "old road," it is too indefinite for any other purpose than to fix the appellation of "the old road" upon that route. It is not susceptible of any definite interpretation of the term "old;" and if that term be used in a relative sense, as the American agent desires, it does not appear to what it relates. From the best authority which could exist, and from *general* authority, the undersigned ventures to allege that the assertion contained in Mackenzie's book, upon this point, arose from mistake, if it was designed to distinguish the route by the Kamanistiquia river as the "old road," in preference to the Pigeon river and St. Louis river.

SEC. 221. In opposition to the conclusion which the American agent would here deduce from the above doubtful expression of Mackenzie, the undersigned introduces the testimony of David Thompson, Esq., as set forth in his affidavit before mentioned, under letter B, in the appendix to this report.

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SEC. 222. That affidavit states that "the agents of the Northwest Company asserted that they opened the route to the interior countries by the Kamanistiquia river on account of the duties threatened to be imposed on their goods by the United States collector, if they continued at the Great Carrying-place; and this route was not opened until the year 1801.

"The route to the interior countries by the river St. Louis is, in my belief, the most ancient; and next in order, the old commercial route by the Great Carrying-place and the Pigeon river. Until the year 1801, the Kamanistiquia river and its route were in a manner unknown to the British fur traders."

To the same effect are the documents set forth in the appendix, already referred to, under the letters G, I, J, K, L, M.

SEC. 223. A contrast of the opportunities of observation and information enjoyed by Mr. Thompson with those possessed by Mackenzie will decide all differences, if there are any (but the undersigned does not perceive any which may not be reconciled) existing between them, in favor of the former gentleman. Mr. Thompson, like Sir A. Mackenzie, was a partner of the Northwest Company. Mackenzie travelled across the continent, to the Frozen and Pacific oceans, and returned. Mr. Thompson likewise went to Hudson's bay, to the Pacific ocean, &c., and remained in the countries here styled the Northwest for sixteen years, surveying, taking observations, and studying to acquire a perfect information of the country, between the years 1794 and 1812. With these advantages, he joined this commission in the year 1816, and again explored for several years those parts of the Northwest through which the boundary has, by various claims and propositions of compromise, been required to be conducted. A familiarity with several of the Indian languages, added to this long, intimate, and renewed acquaintance, enabled Mr. Thompson to collect facts not only from the white men, but from the aborigines also, established by common and universal repute in the country concerned, which is generally the best of evidence.

SEC. 224. Writings and maps, made without survey and without authority, cannot be *relied* upon. General tradition is far the safest authority. The American agent acknowledges (page 19 of his argument, containing 40 pages) that this road by the Kamanistiquia is called at the present day "the new road;" to which the undersigned adds his own testimony, after forming a familiar acquaintance with these territories by inquiry and personal travel, that every man, as far as he knows, European, white American, and Indian, calls Pigeon river, by the Grand Portage, the old road, and the natives say that their fathers termed them so; likewise they unite in calling the Kamanistiquia river the new road.

At page 17 the American agent asserts there were but two routes known—the Kamanistiquia and Pigeon river. It has already been shown, in a previous part of this report, that the route by the St. Louis river was known of old.

SEC. 225. The undersigned would now allude to the allegation of the American agent, (in page 18,) that, "after the treaty of 1794, regulating commerce and navigation, between the United States and Great Britain, and when the Western posts were delivered over to the United States, the traders at the Grand Portage found themselves in possession of a carrying-place and post within the limits of the United States, and their goods of course subject to the duties of a foreign Power," in consequence of which they removed to the Kamanistiquia river.

SEC. 226. It is true that the officers of the United States customs threatened to levy duties, under pretence of the Grand Portage being within the limits of the United States. This encroachment was caused by two circumstances:

1st. The fact of the supposed boundary having been marked on Mitchell's map, by the commissioners who negotiated the treaty of 1783, through Pigeon river.

2d. By the desire of the Americans to gain as much territory as possible, and to drive their competitors in the fur trade as far as practicable from them.

SEC. 227. It is readily conceded, also, that the British or Canada Northwest Company of fur traders did remove from the Grand Portage to the Kamanistiquia river, in consequence of the threats of the American officers of customs, as is stated in the letter of the honorable William McGillivray, set forth in the appendix to this report, under letter G. But it is denied that they removed in 1794, as alleged by the American agent, in consequence of the relinquishment, by the British, of the Western posts within the American lines. They removed not until the year 1801, as declared by Mr. McGillivray in his said letter; and the assertion of the American agent, "that they found themselves in possession of a carrying-place and post within the limits of the United States," as an inducement for their abandonment of their old station, is an allegation on his part entirely gratuitous. He adduces no authority to the point, nor does the undersigned think that he could procure any; if any whatever had been discovered by him, it would certainly have been produced. The fact is as alleged by Mr. McGillivray, that they removed for fear of duties; and against the threat of the imposition of these duties they were at that time unable to make resistance. The fur companies had not the power, and there was no British force stationed within five hundred miles of them.

SEC. 228. Bare assertions pass not for proof, in general. To show that those of the agent of the United States merit not exemption from this rule, the undersigned (referring to the last quotation from that agent's argument) should state two facts, notorious to both Governments: 1st. That no posts in the region spoken of (the northwest end of lake Superior) were delivered over to the United States in consequence of the treaty of 1794. 2d. That the Canadians could not have considered (or, to use the agent's terms, have "found) themselves within the limits of the United States" at the Grand Portage, when that boundary remained yet to be determined.

SEC. 229. The deduction of the American agent, (page 19,) that "the history of what has transpired leaves a fair inference that, in the understanding of the trader," (meaning the British fur trader,) "the boundary line passed through this river," is denied by those very traders, as has been made to appear by the letter of Mr. McGillivray, who was himself a principal fur trader; by the affidavit of Mr. Thompson, who was also many years a partner of the company; and by the affirmation of the undersigned, who declares that he never knew any of the Northwest Company, in all his intercourse among them, who did not consider the St. Louis to be the true course for the boundary, and who did not believe that the Pigeon river, at the utmost, would be the northern limit of the territory of the United States; and they appear to be compelled to this

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SEC. 230. To the declaration hazarded by the American agent, (pages 22-'3,) after a long history of the proceedings of the board, that the commissioners "impliedly and virtually decided the question" as to what is the Long lake, the undersigned contents himself with giving his denial, and referring for his accuracy to the facts as set forth. The commissioners, according to the inference to be drawn from the statements contained in the journal, merely directed at that time the completion of a survey of a certain line, which they must (of course) have deemed to be then imperfectly surveyed. The circumstance, frequently alluded to by the American agent, that the surveyors expressed no doubt "as to the direction the boundary ought to take," is of no consideration. They were directed to survey a certain course of water communication; and *their* opinion, in the survey, was to be exercised only as to the principal and main course of communication, where such water might, in the progress of a survey, be found by them to divide, as it frequently does in these latitudes, and giving rise in this commission to various suggestions for the course of the line.

SEC. 231. The agent of the United States next remarks (page 22) that the agents of the respective Governments "were then" (in February, 1824) "called upon to express their opinions of what remained to be done" in the surveys. That he, the said agent of the United States, "considered that the commissioners were satisfied with the result of their present operations," and that "he accordingly presented a memorial praying that, if the Long lake of the treaty was not doubtful, the surveys should be confined to the limits already explored." That "the British agent objected, generally, to the sufficiency of the surveys." That "the board made no formal decision about the Long lake, upon which question depended entirely the course of the boundary and the extent of the surveys; but its farther instructions impliedly and virtually decided the question. They direct—proceed as early as practicable in the spring to complete the surveys yet required along the water communications from the mouth of Pigeon river to the most northwestern point of the Lake of the Woods."

SEC. 232. It is surprising that the ingenuous agent of the United States should have allowed himself to introduce, in connexion with his mere assertions, authentic matter which goes so clearly to overthrow the very position he takes, that the commissioners "impliedly and virtually decided the question." The undersigned would appeal to the candid opinion of any rational man, whether, from the fact of the commissioners having declined to determine the question, when solemnly and formally called upon by the American agent so to do, the inference—nay, the term *inference* is too weak, the *conclusion*—is not diametrically opposite to the deduction attempted by the American agent, to wit, "that the commissioners expressly and effectually *refused* to decide the question what was the Long lake;" and the subsequent order of the commissioners "to complete the surveys yet required along the water communications from Pigeon river," which the American agent endeavors to force into the service of his argument upon this point, was certainly neither more nor less than would have been issued by any person possessing a habit of doing business in a methodical manner, or of directing it to be done so

by others. The water communications above specified had been partially surveyed; the surveys, generally, were not sufficient to enable the commissioners to agree upon the Long lake; they therefore directed the surveyors "to complete the surveys" of those waters, which had previously been but partial, as the next step in the long progress required. But surely it cannot be implied, from this order, that the commissioners designed that no further survey than is therein specified should be made. Such a deduction would exclude the surveys performed in lake Superior, and from lake Superior through the Neebish rapids, as they had not been effected at the time the order was given. Indeed, to show that such limitation of the surveys was certainly not intended by one of the commissioners, and that it could not have been expected by either, the undersigned alleges a fact, notorious to every officer of this commission, that he, the undersigned, from the commencement of the duties under the 7th article to this day, always expressed his belief that the true Long lake was to be found at the discharge of the St. Louis river; consequently, that surveys would be required from lake Superior, through the St. Louis river. The undersigned is the more particular upon this point, because the American agent proceeds directly to object to the conduct of the undersigned in relation to the survey of the St. Louis.

SEC. 233. The American agent next states the *renewal* of his memorial requesting the board (in October, 1824) to decide what was the Long lake. He states evidence in support thereof, gives a long history of his opinions, of occurrences, and of facts, connecting the conduct of the undersigned therewith as *his* exculpation for abandoning the claim and arguments made, and the evidence adduced by him in that memorial in behalf of his Government, and for assuming a new ground, encroaching upon rights avowedly British, according to his former claim and admission.

SEC. 234. The undersigned here begs leave to refer to the memorial and evidence in support thereof of the American agent, above alluded to. It is set forth in section 116, and in the appendix, letter H. This claim, like the former, urges the commissioners to determine the mouth of Pigeon river to be the Long lake.

SEC. 235. The American agent allows, in his argument filed October 5, 1826, that, after the presenting of his memorial and evidence above set forth, "the British agent, (page 24,) as before, interposed a counter memorial, suggesting the expediency of further surveys, without specifying them;" that "the determination of the Long lake was postponed." And it was ordered as follows: "If it shall be ascertained that the season shall admit of further operation, without hazarding the certain completion of the work already prescribed, the surveyors may be employed during the remainder of the season in making such further surveys and examinations as either of the commissioners may direct and deem important to the better understanding and designation of the true course of the boundary line." This latter provision was made in consequence, exclusively, as far as the undersigned was informed, of his having urged the survey of the St. Louis river; to direct the execution of which the American commissioner declined to unite in an express order, but consented to give the opportunity of having it effected by this discretionary provision. Then, with a view to avoid the charges of surprise, and of an "*ex parte*" proceeding, as subsequently made by the American agent, the undersigned

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cautiously, and without a moment's delay, signified to the American commissioner, at the board, and caused to be entered on the journal, "his opinion of the necessity of executing the survey just specified," (of the water communication from the Fond du Lac of lake Superior to the Lake of the Woods,) "and his intention to direct the same under the authority above mentioned."

SEC. 236. In relation to the above notice, the agent of the United States observes: "Thus, at a late day, the first avowal is made that the present operations were unsatisfactory; and, for the first time, that any doubt existed as to the course the boundary line ought to take."

SEC. 237. The undersigned regrets that he is obliged to deny these remarks "*in toto*." He avers, as before, that he always expressed his belief, both privately and publicly, at the board, that a survey of St. Louis river would be required, as affording the true Long lake, the most direct communication with the Lake of the Woods; and, consequently, the proper course for the boundary. If the American agent should excuse himself by saying that, in what he thus alleged, he intended "the first avowal" *formally made* and entered of record, then it is to be replied that there was no fit occasion for doing it previously, while the surveyors were engaged on another line, namely, the Pigeon-river route, pointed out by the American party as affording the probable course for the boundary, in conformity with Mitchell's map, and with the claims and memorials of the American agent; further, that the formal avowal was abundantly early at the time it was actually made, as appears from the joint instructions of the board at the same meeting, directing certain other surveys to be made, not connected with Pigeon river. Moreover, this statement by the American agent is made in relation to October, 1824, that, "Thus, at a late day, the first avowal is made that the present operations were unsatisfactory." Whereas himself allows (page 22) that, at the meeting of the board in February, 1824, (that is, even *before* the survey of the summer of 1824 commenced; when, on the other hand, the allegation is made of a period after that survey had been finished,) "the British agent objected generally to the sufficiency of the surveys."

SEC. 238. That these objections, on the part of the British agent, continued until the order was given for the survey of the St. Louis, appears also from the admission of the American agent, (page 24:) "The British agent, however," says he, "interposed, as before, a counter memorial, suggesting the expediency of *further* surveys." This counter memorial was filed, as appears from the journal, on the 26th of October, 1824. On the 27th of the same month the board gave discretionary authority to either commissioner to order such surveys as might be deemed important; and, on the 28th, the undersigned gave notice, at the board, and entered the same on the journal, of his intention to direct the survey of the St. Louis river.

SEC. 239. The American agent complains, (page 25,) in relation to this order of the undersigned for the survey of the St. Louis river, that the instructions "were no longer mutual; the same act, too, dissolved any obligation there might have been to be governed by the previous joint instructions."

SEC. 240. The undersigned is compelled again to dissent from both parts of this assertion. The American agent here exhibits a new sentiment of moral obligation, when he declares his opinion that the use of a

permitted authority by one of two parties dissolves the express agreement of those parties on another subject. If such discretionary authority meant any thing, it certainly meant the privilege of using that authority. If otherwise, it was a fraud in the party intending otherwise. The undersigned alleges that the order given by him for the survey of the St. Louis, under the discretionary authority above set forth, as contained in the *instructions agreed upon* by the commissioners, was as *obligatory* and as *mutual* as if expressed by them particularly in their joint instructions, having been *mutually* and *jointly* provided for by them.

SEC. 241. In reply to these objections, made by the agent of the United States, to the order for the survey of the St. Louis river, given by the undersigned, there is another conclusive fact to be stated, which is now done with a solemn avowal of its truth. That, at the time when notice of the intention to issue that order was given at the board, and entered on the journal, neither the agent nor the commissioner of the United States objected to its *regularity*, although they both appeared averse to the proposal; and neither the journal nor the files will exhibit any evidence of opposition to the measure, until the final discussion took place. So far from any positive opposition having been made, in behalf of the United States, to the survey of the St. Louis river, the undersigned repeats that the order of the board, allowing "such further surveys as might be directed by either commissioner," was acquiesced in by the American commissioner, at the request of the undersigned, *expressly* to admit the survey of the St. Louis river; and to all these circumstances, while in progress, the American agent was privy.

SEC. 242. After the last sentence quoted from the argument of the American agent, (page 25,) he concludes with that which is the point he finds it most necessary to defend: "Accordingly, another route more conformable to the treaty, as evinced by the facts now ascertained, is preferred by the agent of the United States." This point he labors with as much ingenuity as the case admits. He proceeds: "It is not meant that the undersigned has at any time conceived that his right to adopt this route had been abridged. He complied, as he thought, to the liberal spirit of *compromise* which *appeared* to have harmonized conflicting opinions; and when he offered certain documents corroborative of the Long lake of Mitchell's map, it was with this view alone. These documents are no longer to the purpose, and he is the better pleased with this new direction given to the subject by the *ex parte* instructions of the British commissioner, because it relieves his claim from any *inconsistency* with his former memorial." He adds, "that he will proceed to show that the Long lake of the treaty is the present Dog lake of the traders on the Kamanistiquia river." This passage, and this long history connected with it, are an effort of the agent of the United States to palliate the unparalleled inconsistency of the vast change of claim made by him in behalf of his Government.

SEC. 243. His first claim was twice solemnly urged before the commissioners, originally in February, 1824, and afterwards in October of the same year. It was put forth as incontrovertible, and as resting upon conclusive grounds, to wit, that Mitchell's map was that which was used by the ministers who negotiated the treaty of 1783, and that this map placed Long lake at the mouth of Pigeon river, and carried the boundary through the same. Neither of these facts was ever denied, either by

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the agent of Great Britain or by the undersigned, his Majesty's commissioner. But the undersigned must allow that the conclusion aimed at by the agent of the United States, that such map was decisive evidence, was *always* denied; the reasons for which denial are elsewhere assigned.

The inapplicability of the terms "*ex parte*," in this case, (as used in the last quotation from the memorial of the American agent,) to an order given in strict conformity with the mutually concerted measure of both parties, has already been shown.

SEC. 244. When the American agent states that "he complied, as he thought, to the liberal spirit of *compromise* which *appeared* to have harmonized conflicting opinions, as his motive for offering documents corroborative of the Long lake of Mitchell's map," the gentleman appears to have forgotten the duties of his office, in his eagerness to furnish an exculpation for his inconsistency, and that he had neither authority nor right to make any compromise of the just claims of his Government. From what circumstances arising in the commission the American agent discovered that "the spirit of *compromise appeared* to have *harmonized* conflicting opinions," the undersigned is utterly at a loss to conjecture; for that agent has asserted, in the same memorial, that the agent of his Majesty always presented a *counter* memorial to the respective memorials presented by him upon this subject. It is well known to all the officers of the commission, that neither the agent nor the commissioner of his Majesty ever before that time contemplated a compromise with respect to the Long lake, as far as their sentiments at the board were evidence of their intentions. The undersigned declares that, on their part, no compromise was ever designed. The fact itself is of no importance; but this artifice, in excuse of such lamentable inconsistency, cannot be permitted to pass without exposure.

SEC. 245. There is one other point, arising out of the passage last quoted, which requires notice.

If the compromise mentioned by the American agent had any actual existence, what necessity was thereby created for his offering documents corroborative of the Long lake of Mitchell's map? When a compromise is made, evidence is generally closed; and a party to whom the "*mens sana*" yet remained would scarcely consent to a compromise, unless the terms had been previously proposed; in fact, until that be done, it cannot be understood that a compromise is in agitation.

SEC. 246. The agent of the United States was, doubtless, very eager to procure the boundary line to be fixed in the water communication of Pigeon river, as appears from his two memorials presented with that object; and he may have hoped by these to induce a *compromise*, by which he might be relieved from apprehensions of the success of the British claim to the St. Louis river, in case the merits of that line of water should be made known by a survey. The "*appearance*," however, of a "*compromise*" to the American agent, must have been produced like the derangement of a maniac: one anxious thought was pursued until (the real object being still unattained) it produced confusion.

The general views of the undersigned, in relation to this gross inconsistency, are elsewhere set forth in this report.

SEC. 247. The agent of the United States next shows a variety of Long lakes, laid down on various maps. Of these the undersigned has to remark, that such lakes as are laid down on some of the maps are not

to be found in nature as laid down, whereby the maps are falsified ; and that, as several long lakes are known to exist, bearing that name, they prove nothing of themselves but greater doubt, until one can be found in the situation and circumstances of it corresponding with the description given in the treaty of 1783.

SEC. 248. Before quitting this subject, however, the undersigned must protest against the modest reservation in reference to it, made by the American agent, (page 28,) "that he reserves the route by the Peak or Nepigon river in behalf of his Government, should it be thought fit for future discussion, in case of a final disagreement ;" a threat which he must have intended to avail his Government, probably from his hope of thereby exciting a distrust, on the part of his Majesty's servants under this commission, in their cause, rather than from any opinion of the reasonableness or admissibility of such a claim.

SEC. 249. Absurd in form as is this excessively bold reservation, *prima facie*, in this state of the case, the undersigned must show, further, how groundless is the pretext for it in reason.

If a Long lake north of the Nepigon river or of the Peak river had been intended by the treaty, a direct line from St. Mary's river, through lake Superior, to either of those rivers, would pass far to the north of Isle Royale, so far as to have rendered it entirely unnecessary that the treaty should direct the boundary to be run north of that island. It would be equally reasonable, because equally unnecessary, to direct mariners navigating between Great Britain and the United States, in effecting their voyages, to pass to the east of the island of Newfoundland. To suppose that they would attempt to do otherwise is to admit the persons to be void of understanding by whom the order is to be executed.

SEC. 250. The undersigned now begs leave to remark upon the maps adduced by the American agent to show that Dog lake is the Long lake. With regard to all these maps, nine in number, enumerated by the American agent, the undersigned makes one general objection : that they are entitled to no credit in this commission ; and he will now specify some of the objections existing against them, severally.

SEC. 251. With respect to the first, second, third, and fourth maps, as numbered and commented upon by the American agent, one and the same objection applies, to wit, they were all published in London before the treaty of 1783 was negotiated ; the first being dated in 1762, the second in 1775, the third in 1776, the fourth in 1777, and the latest of them at least six years before the treaty was concluded ; consequently, they were not so new as to leave a reasonable opportunity for the suggestion that the negotiators could not have possessed themselves of them.

In a negotiation of so great importance as was the treaty of 1783, involving the entire limits of one of the parties, and affecting the interest of the other party throughout, is it possible that the ministers engaged should have failed to obtain, or that the respective Governments should have failed to put them in possession of, every document and every map in which they reposed any confidence, as capable of affording light upon the matters in which they were occupied ? Now, not one of these maps, nor any other except Mitchell's, appears to have been used by the negotiators. This was presented in evidence before the board by the American agent, and was freely allowed, both by the agent and by the commissioner of his Majesty. Is it not clearly to be inferred that those

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ministers placed greater confidence in Mitchell's map than in any other they could procure; and, with that map in their hands, they acted diametrically counter to the maps and opinions which the American agent here attempts to establish, in passing by the Kamanistiquia river, notwithstanding the Long lake which the maps now under discussion contain, as situate on that river, and by conducting the boundary to the mouth of Pigeon river. The undersigned here desires to be understood not as giving credit to Mitchell's map for accuracy, for this commission has proved it to be grossly inaccurate, but as exhibiting the preference given to it, erroneous as it is, by the negotiators of 1783.

SEC. 252. The fifth map enumerated by the American agent bears date at London, the 9th February, 1783, nineteen days after the treaty was concluded; and the sixth map was published at London, the 3d April, 1783, seventy-three days after the treaty. On both these, the American agent remarks, Long lake is laid down upon the Kamanistiquia river, and the boundary is marked through the same. These facts, the undersigned ventures to affirm, instead of proving the course which the boundary should take in conformity with those maps, tend to prove that those maps are unworthy to be conformed to, or to be credited in any particulars of moment; for both of them being published in less than three months after the treaty was concluded, describing the boundary line, which line was marked to and through Pigeon river upon the only maps used by the negotiators, they yet, at so early a period, and of course before any new information could have been procured upon the subject, undertake not only to set forth a Long lake not contained on Mitchell's map, but to set it forth as the Long lake intended by the treaty, and to conduct the boundary through it accordingly. The conclusion at which the undersigned would arrive is this: that these maps were made without any discretion; the makers of them probably relying upon the general ignorance which prevailed, with respect to the countries in question, to give them currency.

SEC. 253. These remarks, with the exception of the circumstance of date, may be applied to the remainder of these maps, as enumerated, to the ninth. The fact is, with regard to them all, there is not one which pretends to any authority; not one was constructed from an authorized survey; not one was ever confirmed as true by any individual qualified or empowered to do so; but one and all are proved by the surveys of this commission to be full of errors, and totally unworthy of confidence. The multiplicity of the maps does not produce an accumulative evidence, unless the repetition of error can be proved to produce truth. The circumstances contained in these maps, as here controverted, found place in those of later dates, no doubt, by being copied from the older, no other question being made than that it was so found in print.

SEC. 254. In proof of the last remarks, it appeared, from an inspection of the original maps adduced at the board (of which only copied morsels were put on the files) by the American agent, that several of them formed several sets, each set struck from the same plate; that they corresponded not only in their delineations of land and water, but in the borders and in the vignettes for the titles; and, generally, that the titles only were altered, the maps having first been published for the English, and afterwards for the American market, with titles adapted to produce sales in them, respectively. This fact could be made to appear imposingly

evident, had the said maps been put on file so as to allow an examination of them. That they were not filed, but only copied *scraps* of them, constitutes another objection to the evidence.

SEC. 255. The American agent adds, in respect to these maps: "The whole of this evidence is derived from a source to which his Britannic Majesty's agent will not except. The maps are composed and engraved by British geographers of the first reputation. The materials were furnished mostly by engineers and surveyors in the service of his Britannic Majesty."

Part of these assertions is admitted, but not allowed to have any weight; part is denied, and part is alleged to be gratuitous.

SEC. 256. The first map pretends to be made by Thomas Jefferys, geographer to his Majesty, 1762, and prepared to be annexed, in way of illustration, to a volume of voyages translated from the *High Dutch* by S. Muller. If it be supposed that the maker of the map had as good opportunities to gain the information he required as the writer of the voyages should be entitled to have, from his being a German, and professing to write travels in a distant British Province, the argument must be conclusive. But setting aside the authority of the *High Dutch* traveller, is it to be concluded that, because Mr. Jefferys was geographer to the King, therefore every act performed by him receives the King's sanction? Certainly not. As soon would I argue that some honorable friend, in whose candor and veracity I would place perfect confidence, while under the obligations of private life, would feel himself bound to the same adherence to candor, should other duties call him to exercise the office of an advocate, or of an agent to advance the interests of his principal "*per fas et nefas*." The second map is from the French of Mr. D'Anville, improved, &c., but without the name of any publisher. This one comes not within the limits of the agent's assertions. It appears not to be made by an English geographer, nor the materials to have been furnished by English officers and surveyors. Yet it is extraordinary that the American agent asserts, (page 35,) with respect to this very map, that "it has official authority, it being noted upon this map the boundaries of the Provinces since the conquest of Canada, are laid down as settled by the King in council." Of what greater force is such testimony in print than if it had been oral? The fact of no publisher's name being given of itself discredits the map. But admitting the allegation, can it be denied that a boundary may be correctly laid down on maps which are in other respects incorrect?

SEC. 257. With regard to the whole *nine*, it is denied that the persons whose names are attached to them were either "engineers or surveyors in the service of his Britannic Majesty." Some of them may have been at some time and in some capacity in the pay of Government, but it does not appear that the maps in question are in any way substantiated under the offices held by any of those individuals. This much of the allegation appears gratuitous.

The undersigned cannot for a moment believe that such maps as these should be considered to possess any authority.

SEC. 258. The American agent says: "It is the preponderance of testimony which must decide; other Long lakes and other boundary lines engraved on other maps will no doubt be exhibited; but are they equally credible?"

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It is from his knowledge of the fact that other Long lakes and other boundary lines engraved on other maps could be exhibited, that the American agent conjectures they will without doubt be exhibited. It is certainly true such could be exhibited, and *equally credible*; but they will not be introduced in this report as containing any positive proof. All the old maps are denied to be of any avail; they are known to have been made in ignorance, and to be replete with errors. Such as may be noticed by the undersigned will be mentioned only relatively, to meet those which have here been discussed. "That the preponderance of testimony must decide," the undersigned would be most happy to be assured. He depends not upon a catalogue of old maps, falsified in every inch of them, but he relies upon the most minute surveys, performed under this commission during four successive years, upon the exhibition of facts in relation to the comparative merits of the several routes surveyed for the course of the boundary, and upon the reason of the case.

SEC. 259. The American agent next asserts (page 36) that, "among the circumstantial considerations which sustain it," (this claim to the Dog lake as Long lake,) "is the fact that there is no other Long lake proper upon any map yet found, of previous date to the treaty of peace."

SEC. 260. It is perfectly indifferent to the undersigned, in the consideration of this question, whether there be any Long lake proper upon any map yet found, of previous date to the treaty of peace; although the undersigned avers the fact that such a Long lake can be shown on the old maps. But the existence of such a Long lake was well known, as appears from the treaty and other ancient documents; for the ascertaining of that lake, among other things, this commission was appointed. If old surveys sufficed, the surveys authorized under this commission would not have been required; and now by these surveys the Long lake can be found, clearly corresponding with the precise terms of the treaty, and with every inference deducible from it.

SEC. 261. It remains to be determined whether the accurate and well-authenticated maps of the surveys performed under this commission shall be rejected as false, and the spurious maps introduced by the American agent be confirmed as true and genuine, both of which acts are required to be done, should the claims of that agent and the coinciding opinions of the commissioner of the United States be allowed; or whether the latter shall be discarded, as an idle attempt at imposition, and the former receive that sanction which the talents and labor bestowed upon them appear to merit.

SEC. 262. The next assertion of the American agent to be noticed is, (page 36,) that "the error (to wit, of placing Long lake at the mouth of Pigeon river) by rightful inference was equally well understood by the negotiators of the treaty, and therefore the little Pigeon river would not have been their Long lake."

SEC. 263. In remarking upon this passage, the undersigned would first merely advert to the contradiction of these sentiments, as of the claim generally, to those set forth in the same American agent's claims *previously presented*, asking the commissioners to determine the Long lake in *conformity with Mitchell's map*, in consequence of that map having been used by the negotiators. Next, he would cursorily observe the absurdity of supposing that those negotiators would act upon an "error well under-

stood by them," as the agent alleges, in the same manner as if it were a truth ; for, whatever was the condition of their information upon the subject, they certainly conducted the line to the mouth of Pigeon river, where a Long lake is laid down on Mitchell's map. This they surely could not have done, if they had known that no Long lake was there. The inference is, that having agreed to fix the line through the Long lake immediately connected, without straits or river, according to the terms of the treaty, with lake Superior, and finding such a lake marked on Mitchell's map, they *delineated the boundary* through it, not to show or declare that the Long lake lay in that spot, but that the line must pass through the Long lake, wherever it might be.

SEC. 264. The American agent proceeds, (page 40 :) " The fur traders finally fixed upon the Kamanistiquia river, as the most *expedient* navigable communication." It has already been shown in this report that the British Canadian fur traders removed to the Kamanistiquia river to avoid collision with the officers of the American customs, against whom they had no protection. That was the point of *expediency* in removing to the Kamanistiquia river, and not the superiority of that route. It is a fact familiar to every person who has investigated this point, or who is conversant with the interests concerned in it, that the traders are extremely desirous of returning from the Kamanistiquia river to the more southern routes, and that they are resolved to do so if the boundary be established in such a manner as to authorize them.

SEC. 265. In conclusion : The undersigned, in the existing amplitude of this report, declines a general recapitulation. If the relation has become tedious, it was rendered so by the necessity, imposed on him, of clearing the subject from the uncandid pretensions and fallacious arguments with which it has been obscured. His own opinions upon the original matter might have been briefly stated, *veritas simplex oratio*. In conformity with this declaration, he will sum up in six words, by soliciting *reference to the maps and journal*, signed and certified by the commissioners, as a sufficient evidence to substantiate every important and principal point urged by him. All other evidence is liable to objections, feigned if not real. These maps, however, are the collected and matured evidence of several years of labor, to which the surveyors, upon oath, placed their certificates, in presence of the commissioners, by whom the same were countersigned, in testimony of their genuineness and authority.

SEC. 266. Thus, to show the greater proximity of the larger part of St. George's island to the Canada main shore than to the American main shore ; to prove that a *middle line equidistant* between the respective main shores was the boundary generally established, where islands intervening did not require a deviation to prevent their being severed ; to exhibit the long Lake as described in the treaties of 1783 and of 1814 in immediate connexion with lake Superior, possessing dimensions which entitle it to such *cognomen*, forming a portion of a water communication to the Lake of the Woods, that communication being also the easiest and least interrupted by portages ; to manifest the distinctness and certainty, also, with which all the islands and portages contiguous to the boundary line through this route, which is urged by the undersigned, are described and marked ; to display, on the other hand, the injustice of the commissioner of the United States, in refusing to fix the boundary line through

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the Neebish channels, according to the same principles which had been generally applied to the establishment of the line in other parts; to show the want of such a certified map of the route claimed for the boundary by the American commissioner, through the Kamanistiquia river, and the water communication from it to Sturgeon lake, in consequence whereof the merits and demerits of that route do not appear, and there is no diagram upon which an intelligible boundary line could possibly be described, if required; the absence upon that route (as far as any map has been produced) of any lake known by or meriting the appellation of *the Long lake*; the defective description of the line here claimed by the American commissioner, wherein he has neither specified the course thereof in relation to the numerous islands, the adjacency of which must frequently control its course on either side, nor mentioned and marked those islands—a precision which, indeed, the want of a survey and of an accurate map rendered impossible for him to use. These being the principal points in issue between the commissioners, the undersigned appeals to that evidence which the commissioner of the United States has united with him in verifying; and he leaves to that commissioner an exercise for his ingenuity, notwithstanding this sanction and declared sufficiency, to abridge the fulness or supply the deficiency thereof, both of which operations will be necessary to form an opening for the admission of the inequitable and extravagant claims advanced in behalf of the United States.

ANTHONY BARCLAY.

NEW YORK, October 25, 1827.

Witness :

RICHARD WILLIAMS,

Assistant Secretary, 6th and 7th articles treaty of Ghent.

APPENDIX.

A.

David Thompson, Esq., one of the principal astronomers and surveyors under the 6th and 7th articles of the treaty of Ghent, being duly sworn, deposes and says: That the line marked on the maps of the commission under the above articles, to designate the boundary line, under the 7th article, was by him measured and delineated upon the said maps, as near as possible equidistant from the respective main shores, by the directions of the commissioners, as far as they agreed; except where islands intervened, and, also, excepting that part of lake Superior where the treaty requires the boundary to be conducted north of isle Royale. That St. Tammany's island, next to St. George's island, in the Neebish channels, would be intersected by a line equidistant from the nearest opposite main shores. That he calculated for the commissioners the contents of the area of the several islands under the 6th article of the treaty of Ghent, which would have been intersected by a line equidistant from the opposite main shores, in order that the party receiving the appro-

priation of any such island entire might give credit to the other party for the portion it surrendered which would have fallen on its side of such middle line; and in order that each party might receive of the undivided islands in proportion to the shares they would respectively have been entitled to, in case the islands had been divided by a middle line. That he conceives Pigeon river, below the west end of the Great Carrying-place, to be impracticable for the navigation of canoes, not only from what he has himself seen of it, and from the high, rocky, steep sides of that river, but also from the disinterested accounts of those who have inspected this part of the Pigeon river; but from its frequent falls, &c., having steep, high cliffs on each side, where no landing can be effected, and the adjacent country being extremely rocky and broken. In 1798 he geometrically measured the banks of lake Superior, in the bay of the Great Carrying-place, and found them 842 feet above the level of the lake; and he believes the Pigeon river, from the west end of the above Great Carrying-place, must descend about two thirds of the above height, in a length of about eighteen miles, to its sortie into the lake. That he was about sixteen years in the service of the Northwest Company, either as astronomer and clerk to or as a partner of the said company. That he had to become acquainted with the language; that he never heard the Dog lake, (*Lac des Chiens*), either by the natives, or the traders, or their men, ever called by the name of the *Long lake*. That the river which forms the Dog lake, the lake itself, and the carrying-place out of this lake, (to avoid heavy falls,) and the river below, to the best of his knowledge, are called Dog river, lake, and carrying-place, &c., from the translation of the native name, *Animos Lepee* (Dog river,) *Animos Sakahagan* (Dog lake,) &c. &c. &c. And the shape of the Dog lake by no means entitles it to the name of *Long lake*. Nor, to the best of his memory, was such a name brought forward for the Dog lake, by the agent of the United States, until after the survey of the St. Louis river, &c., was ordered by the British commissioner. That he was frequently in company with one of the French gentlemen who carried on the fur trade at the conquest of Canada, an intelligent person; and the deponent, to the best of his memory, never learnt, or heard from this French gentleman (*Monsieur Réaume*), that isle *Pâté* was one of the isles *Philippeaux*.

The Canadians name this island *Le Pâté*, from its high steep cliffs, apparent round form, and isolated position. That westward of the Peak river, in lake Superior, there are only two great routes practised by the natives, as extensively leading to the interior countries, viz: The Nee-peggo river and the river St. Louis; which last is, in fact, from ancient times to the present day, the great high road of the majority of the natives. And that last year (1826) it was stated in the American papers, that two thousand of the natives met Governor Cass (of the Michigan Territory) at the estuary of the river St. Louis; and along the whole circuit of lake Superior, this river has no parallel, for being navigable, for its soil, climate, and the fine extensive countries it leads to. This he deposeth from his own personal knowledge, he having, in 1798, surveyed part of the fine countries of the Red river and lake, the sources of the Mississippi, &c., to the sortie of the river St. Louis, in lake Superior.

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evidence, and put on file by the British agent, in October last, to the best of his knowledge, left Canada in August, 1825, and died near London, October 17, of the same year.

DAVID THOMPSON.

Sworn, this 3d day of June, 1827, before me,
PETER DEMPSEY, *Commissioner, &c.*

I certify this to be an exact and true copy of the original document, with which I have compared it.

RICHARD WILLIAMS,
A. Sec. 6th and 7th art. treaty of Ghent.

B.

I hereby certify that, for a boundary line throughout the 6th article of the treaty of Ghent, the United States commissioner resorted to a line, as near as possible, equidistant from the opposite main shores; and wherever this line intersected an island, the island was considered as belonging to the side on which the greatest portion of it lay.

That St. George's island, intersected by a line as near as possible equidistant from the opposite main shores, has its greatest part on the British side of this said line. That, in general, the Middle Neebish channel and Sugar rapids have a good depth of water, sufficient for the heaviest loaded batteaux and canoes; and this Middle Neebish channel and Sugar rapids are always preferred by such craft to the other two channels. That the passage by this Middle Neebish channel is shorter by ten and a half statute miles than by the East Neebish channel, and less exposed in gales of wind. That the route by Pigeon river has thirty-four carrying-places. That the route by the Kamanistiquia river has thirty-one carrying-places and several discharges, or partial unloading of the cargo; when the water is high, very many of its rapids are dangerous; and, in years of very low water, is almost impassable, from continued shallows. That the agents of the Northwest Company asserted that they opened the route to the interior countries by the Kamanistiquia river, on account of the duties threatened to be imposed on their goods by the United States collector, if they continued at the Great Carrying-place; and this route was not opened until the year 1801.

The route to the interior countries by the river St. Louis is, in my belief, the most ancient; and next in order, the old commercial route by the Great Carrying-place and the Pigeon river.

Until the year 1801 the Kamanistiquia river and its route was, in a manner, unknown to the British fur traders. The route from lake Kas-eiganagah to the Sturgeon lake was never known to or practised by the fur traders, except, many years ago, to the people of one or two canoes who collected furs on those waters. The Arrow river, from what I saw of it, is too shoal to be a route for loaded canoes.

By whatever route the canoes pass into the interior country, the full use of the present carrying-places is necessary for them; as, in several places, no other practicable carrying-places can be made in the present

state of those countries, from natural obstacles; and this particularly on the Kamanistiquia route.

DAVID THOMPSON,
*Astronomer and Surveyor to the Board of Commissioners under
the 6th and 7th articles of the treaty of Ghent.*

NEW YORK.

Sworn, this 11th November, 1826, before me,

J. FAIRLIE, *Commissioner, &c.*

I certify the above to be a true and exact copy of the original document, with which I have compared it.

RICHARD WILLIAMS, *A. Sec.*

C.

*Extract from the journal of the Commissioners, under date of "Utica,
June 18, 1822."*

Mr. Commissioner Barclay presented to the board the following paper, on the subject of the differences of opinion which existed at the time of the last adjournment, respecting a certain portion of the boundary line, viz :

The undersigned, commissioner of his Britannic Majesty, informs the commissioner of the United States that he has communicated to the Government of his Majesty the proceedings of the board relative to the boundary embraced by the 6th article of the treaty of Ghent; and that he, at the same time, expressed his confident opinion that, in case of a reference of the points in difference to some friendly sovereign or state, the result would prove favorable to his Majesty's interests; that he has, nevertheless, received instructions from his Majesty's ministers rather to concede to the United States the possession of the three islands—namely, Sugar, Fox, and Stony—which form the ground of controversy, than to break off the amicable negotiations on foot between the respective commissioners; and, for an object of such small importance to either Government, incur the great expense and delay which must result from any reference to a third Power.

The undersigned, therefore, is ready to cede Sugar, Fox, and Stony islands to the United States, provided the commissioner of the United States agree to appropriate the island of Boisblanc to his Majesty, and to establish the line in the water passage between Boisblanc and the three before-mentioned islands.

In communicating this additional mark of the friendly disposition of his Majesty's ministers towards the Government of the United States, the undersigned wishes it to be clearly understood that he does not hereby depart from any of the principles which, as his Majesty's commissioner, he has asserted, and which formed the general practical basis of the arrangement, so far as the said boundary line has been agreed upon.

Dated at Utica, in the State of New York, the 18th day of June, 1822.

ANTHONY BARCLAY.

I certify that the above is a true and exact extract from the journal of the commission.

RICHARD WILLIAMS,
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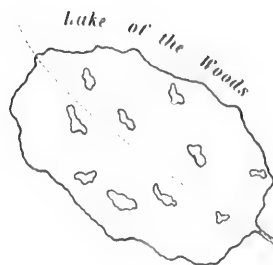
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*A Map of the
British Colonies in
NORTH AMERICA*

*with the
Roads Distances Limits and Extent of the
Settlements
Humbly Inscribed to the Right Honourable
The Earl of Halifax
and the other Right Honorable
The Lords Commissioners for Trade & Plantations
By their Lordships*

*most obliged
and very Humble Servant
John Mitchell*

*True Copy
Sam^l Thompson
Draftsman & Ass^t Surveyor*

Lake
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River
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I hereby certify this to be a true Copy as far as it
extends of the above titled Map.

David Thompson

As^t C Surv^r to the Board of

Commission 6.C.7 Ar^t of the Treaty of Ghent.



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is called generally,) is a small indent or bay, into which falls the *Rivière aux Tourtres*, which is navigable for about half a mile, when you come



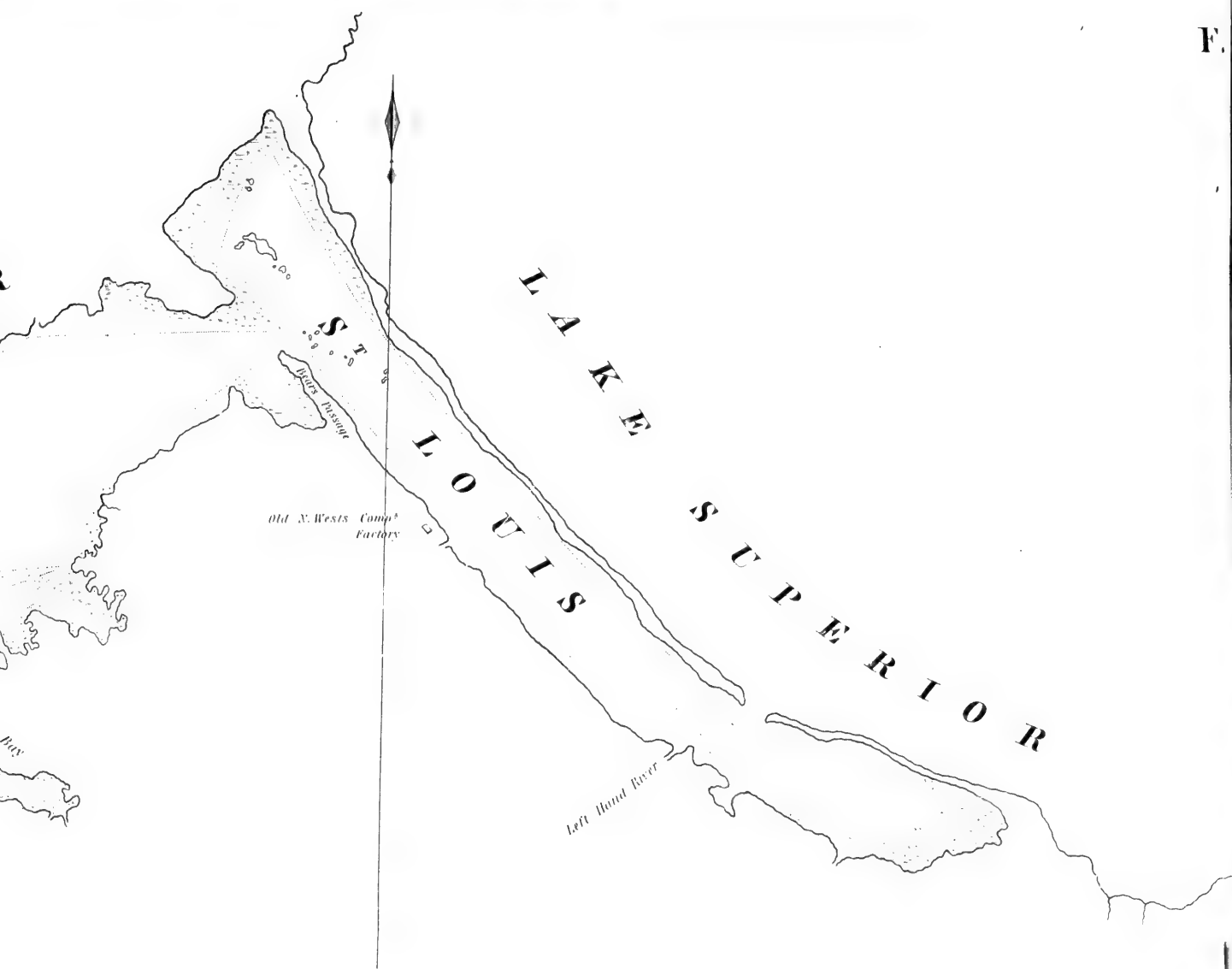
I hereby certify this to be a true Copy as far as it extends of the original Map filed by order of the Board of Commission under the 6.C.7 Article of the Treaty of Ghent.

David Thompson

As^t C^t Surv^t to the Board of Commission
under the 6.C.7 Art^l of the Treaty of Ghent.

Scale of Geographical Miles





Scale of Geographical Miles

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I, Samuel Thompson, draughtsman and assistant surveyor to his Majesty's commission under the 6th and 7th articles of the treaty of Ghent, hereby certify that I have surveyed, by the orders of his Majesty's commissioner under the 6th and 7th articles of the treaty of Ghent, the river St. Louis, from its sortie into lake Superior to the height of land; and from thence, down the waters of river Vermillion, to Sand Point lake. The north-west part of the estuary of the river St. Louis is full five miles in length, and its breadth two thirds of a mile; the southeast part of this estuary is one mile and a quarter in length by half a mile in breadth; the south-west part is in length three miles, and its greatest breadth one mile and a third; from thence, the river has various breadths to the Grand Portage and to the height of land. Am well acquainted with the route by the Grand Portage and Pigeon river, having surveyed this route by the orders of his Majesty's commissioner under the 6th and 7th articles of the treaty of Ghent. It has thirty-four carrying-places; the route by the St. Louis river has twenty-one carrying-places; and, from its having but one river leading to the height of land, and from this height of land another river (Vermillion river) flowing in a continued stream to Sand Point lake, (which waters flow in a direct and continued stream to the Lake of the Woods,) I consider this route as the most continuous water communication of the two.

SAMUEL THOMPSON,
Draughtsman and assistant surveyor.

Sworn before me, at Glengarry, E. D. Upper Canada, this 7th day of June, 1827.

AMB. BLACKLOCK,
J. P., E. D. Upper Canada.

I certify this to be a true and exact copy of the original document, with which I have compared it.

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

G.

MONTREAL, September 4, 1824.

MY DEAR SIR: I received the favor of your letter of the 27th July the moment I was setting out for the Falls of Niagara, which circumstance prevented my making an immediate reply. That I have so long delayed it, I feel, demands from me an apology, for I returned last week from my excursion. I hope it is not yet too late; I shall therefore proceed without further preamble, though I fear my observations will not be of much service.

The surveys made of the lake Superior last summer, and the previous examination of its coast by Mr. Thompson and others, show sufficiently that no inlet (to deserve the name) is to be found on its northern shore. Opposite to the west end of isle Royale, (or isle Minos, as it is called generally,) is a small indent or bay, into which falls the *Rivière aux Tourtres*, which is navigable for about half a mile, when you come

to the rapids. About nine or ten miles westward of this river is the *Grand Portage*, a carrying-place near *three* leagues in length, at the north end of which you again find the *Rivière aux Tourtres*; this river, or rather a chain of portages and rapids, is followed up to its source—perhaps in all forty miles—when you come to the *hauteur des terres* [height of land] dividing the waters which fall into lake Superior from those falling ultimately into Hudson's bay, through the Lake of the Woods and lake Winnipeg. At first, these waters are so trifling and shallow as not to have sufficient depth or width to pass a canoe of twenty-five feet with any loading; it, however, soon increases by the addition of several other small streams, and forms, by the time it falls into lake La Pluie, a river of considerable magnitude; but the route of the *voyageur* from the height of land is impeded by many carrying-places and rapids, which connect the little lakes into which it frequently widens in its course. These lakes are in succession, (going into the interior,) 1st, *Saguinaga*; 2d, *Lac des Trois Blanc*; 3d, *Lac Croche*; 4th, *Lac La Croix*; and 5th, *Anameccan lake*, the *Lac La Pluie*. But these lakes are very distant from each other, though connected by rapids and carrying-places, except the two last mentioned, which are only separated by one carrying-place of no great length. How this route between lake Superior and lake de la Pluie could ever be called the *Long lake*, I cannot conceive; for it is made up of shallow and narrow small rivers and rapids without number, and thirty-six carrying places, together with the lakes above mentioned, with many others not worthy of a name.

By this route, and this route only, was the trade to the northwest country carried on by the French while in possession of Canada, and from the conquest until the year 1803 by the English traders; when the difficulties and expense attending the transport of goods from lake Superior, by way of the *Grand Portage*, to lake La Pluie, became so great that the Northwest Company removed the general depot to *Kamanistiquia*, since called *Fort William*, stationed about fifty miles eastward of the *Grand Portage*. The whole length of the carrying-places from lake Superior to Lac La Pluie by this route is twenty-seven miles, which is less by five or six than by the other route. This new communication, I presume, can be no question in the present discussions, for it never was practised by the French as a communication to the interior, although they had trading-posts on the river Kamanistiquia, near the banks of lake Superior; and so little was it known, that, before the Northwest Company could venture to send canoes by it, a minute survey was made (by the writer of this) in 1802, in order to ascertain its practicability.

That the route by the *Grand Portage* to Lac La Pluie (the only one practised or known to the French Indian traders) was the one contemplated by the treaty of 1783, I have but little doubt. How it came to be designated in the French charts the *Long lake*, I cannot conceive.

There is, however, another route of communication with the interior from lake Superior, and the one which should have been fixed upon as the boundary line at the time of making the treaty of Paris.

Into the west bay of lake Superior, known by the name of *Fond du Lac*, falls the river St. Louis, by far the largest stream which that lake receives into its bosom. By this river, and in its vicinity, there is a route to the interior country, (to lake La Pluie and the Lake of the Woods;) it was practised from the year 1796 by the Northwest Company, until

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that country was given up to the Americans, in consequence of the treaty of Ghent; and has since that time been constantly used by the American Fur Company. I do not see why this route may not as well be called the *Long lake* as any other; it is, like all the other communications between lake Superior and lake La Pluie, or the Lake of the Woods, made up of shallow rivers, rapids, carrying-places, and lakes. It is the only bay or inlet to be found on the north and west shore of the lake, and possibly may have been the route intended by the treaty; for both parties appear to have been equally ignorant of the geography of the country, although the one commissioner had more cleverness or cunning than the other.

As to the copy of this chart (said to be the identical one before them) now brought forward, admitting that it is a *real* copy, the reference in it to places which do not exist, and being evidently founded in error, I should think would do away any credit attached to it by the American commissioners. *Lake de la Pluie*, next in size and extent to the Lake of the Woods, is never mentioned as being in the route to that lake; nor is the river connecting these two lakes, which is a large body of water, perhaps equal in magnitude to the Hudson river, and fifty or sixty miles in length. If the route of the river St. Louis, or *Fond du Lac*, could be established as the boundary, it would be gaining a great extent of country; the distance, computed from the Grand Portage to *Fond du Lac*, is eighty leagues. Such an arrangement, however, cannot be hoped for, although it may be stated as one of the routes connecting lake Superior to the Lake of the Woods. To the new route from Fort William they have no pretension whatever, as it was never practised by the French, nor by the English traders until 1803; and one reason for the Northwest Company's abandoning the Grand Portage at that time, (which was done at a great sacrifice,) was a fear that the collector of the customs at Michilimackinac would send officers to raise duties on 'our goods; this had been threatened, and I have no doubt would have been attempted had we remained much longer at the Grand Portage. As to whether the *Rivière aux Tourtres*, already mentioned, from its debouche into the lake, or the *road* in the Grand Portage until it strikes the said river, (which is really the ancient route, as the river to this point is altogether impracticable,) is perhaps the only question; and the space of country to be gained or lost by either party is of little or no consequence, as it is a mountainous, steril tract; but, by making the river the boundary from the lake, there are no means of getting to the south end of the Grand Portage, (the point of embarkation for canoes; it would, therefore, be excluding British subjects from going into the interior by that route; whereas, by making it *through* the Grand Portage to the same point of embarkation, it leaves the road open to both parties. This route is now but little practised, as most of the canoes go in pass by the Fort William route.

I am, my dear sir, most faithfully yours,

W. MCGILLIVRAY.

HON. JOHN HALE.

This is to certify to all whom it may concern, that for a long period I was intimately acquainted with the late honorable William McGillivray, in his lifetime, of Montreal, and have very often seen him write; I

therefore can aver and testify that the above letter is actually in his handwriting, and the subscription of his name (W. McGillivray) thereto is also in his handwriting.

HENRY CARY.

NEW YORK, *September 29, 1826.*

CITY AND STATE OF NEW YORK, ss.

Henry Cary, of the city of New York, merchant, being sworn, says: That the facts set forth in the foregoing certificate, subscribed by him, are just and true; and further says not.

HENRY CARY.

In testimonium veritatis, sworn before me this 29th day of September, 1826.

WM. E. DUNSCOMBE,
Notary Public, city and State of New York.

I certify that the above letter of W. McGillivray, together with the sworn certificate, contained in appendix, (G,) of Henry Cary, is an exact and true copy of the original document filed by order of the board, October 5th, 1826.

RICHARD WILLIAMS,
A. Sec. under 6th and 7th articles of treaty of Ghent

H.

The agent of the United States has the honor to ask that the board do now proceed to determine the proper place of departure of the boundary line from lake Superior to the northwest, with a view to supersede the necessity of any further surveys in that direction. That the Long lake intended by the treaty of 1783, to which the line is to run from the north of isle Royale, is a sheet of water now known by the name of Pigeon river, and is situated near the old Grand Portage; and that it is, consequently, the route intended to be described by the said treaty, he conceives is sufficiently substantiated by the following testimony, which he has the honor to present:

First. Mitchell's map of North America, published in 1755, under the sanction of the Lords Commissioners for Trade and Plantations. This map shows the place called Long lake to be the mouth of Pigeon river, (as now called,) near the old Grand Portage.

That it was Mitchell's map upon which the boundary line was described by the commissioners in 1783, is established by the following documents, which he begs may be filed with the records of the commission.

JOS. DELAFIELD,
Agent of the United States.

MONTREAL, *October 25, 1824.*

SIR: I have the honor, agreeably to your verbal request yesterday, to transmit to you copies enclosed of Mr. John Adams's communication to the Governor of Massachusetts, extracted from Wait's State Papers,

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HENRY CARY.

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and Colonel Pickering's letter to Mr. Sullivan, agent under the 5th article of our treaty of 1794 with Great Britain, on the subject of the boundary lines between the two countries; and am, with great respect,

Your obedient and very humble servant,

DANIEL BRENT.

JOSEPH DELAFIELD, Esq., New York.

A No. 4.

Extract of a letter from his Excellency John Adams, Esq., to his Honor Lieutenant Governor Cushing.

AUTEUIL, NEAR PARIS, October 25, 1784.

In writing upon the subject of the line between Massachusetts and Nova Scotia, he observes as follows:

We had before us, through the whole negotiation, a variety of maps, but it was Mitchell's map upon which was marked out the whole of the boundary lines of the United States; and the river St. Croix, which we fixed on, was upon the map the nearest river to St. John's; so that, in all equity, good conscience, and honor, the river next St. John's should be the boundary. I am glad the General Court are taking early measures, and hope they will pursue them steadily until the point is settled, which it may be now amicably; if neglected long, it may be more difficult.

Attest: JOHN AVERY, JUN., Secretary.

Copied from the 10th vol. of Wait's State Papers, marked "Confidential, p. 15."

Extract of a letter from Mr. Pickering, Secretary of State, to James Sullivan, Esq., under the 5th article of the treaty of 1794 with Great Britain, dated

DEPARTMENT OF STATE, July 9, 1796.

By some documents which I shall send you next week, you will see that the American and British commissioners who negotiated the treaty of peace at Paris used Mitchell's map of North America. This will be considered as an important document. I shall send you the map, in which you will see traced our whole boundary line. Whether it is the identical map used at Paris I am not informed. You will be pleased to preserve it, that it may be returned to this office, when your agency shall be accomplished.

Certified to be a true copy from the files of the commission, dated October 28, 1824.

RICHARD WILLIAMS, A. Sec.

I certify that the above is an exact and true copy from the certified copy of a memorial of the United States agent, together with three accompanying documents, filed by order, October 28, 1824.

RICHARD WILLIAMS,

A. Sec. 6th and 7th articles treaty of Ghent.

I.

The undersigned, William Mackay, gentleman, now of the city of Montreal, in the Province of Lower Canada, doth hereby certify: That he was a partner of the Northwest Company, under the firm of McTavish, McGillivray, and Company, for the fur trade of lake Superior, and the countries east, north, and west, of the said lake. That the great depot of the fur trade was at the Great Carrying-place, a few miles west of the mouth of Pigeon river, in lake Superior. That from a strong belief, founded on the assertions of the United States officers at the garrison of Michilimackinac, to himself in person, that the above depot was within the limits of the United States, and they would levy heavy duties on all merchandise, stores, &c., imported thereto, and on all furs, &c., exported therefrom; which, had it taken place, would have been ruinous to the said company carrying on the fur trade, the said company was obliged to examine the countries to the northward and eastward of the said Great Carrying-place, for another route to the interior countries. That the northeast side of the Pigeon river was examined by Sir Alexander Mackenzie and others, who pronounced it impracticable for commerce. That the undersigned, in the year 1801, at the orders of the said Northwest Company, undertook, with Mr. Jean Baptiste Pomainville, one of the clerks of the said company, eight experienced men, and a native, in a canoe, to explore a route from Lac La Pluie to the mouth of the Dog river, in lake Superior, called Kamanistiquia; which they performed with great difficulty and hard labor. That they found the whole country through which they passed a perfect wilderness; that they had, with great labor to open roads through forests, to carry their canoe, &c., to avoid dangerous rapids, falls, &c., in the rivers, and also to cut roads to communicate with brooks, ponds, and lakes, which had no other known communication, or were too shallow even for their light canoe. That, on arriving at West-e-go Estee-quan lake (near Lac des Mille Isles) they there found the carrying-places to have narrow foot-paths, which gave them much severe labor to clear, so as to admit the carrying of their canoes, &c., and which continued down to Kamanistiquia. That they judged a great part of the route from Lac La Pluie to Lac La Croix to be impracticable for loaded canoes; and which was accordingly rejected. That the undersigned, with his party, proceeded to the Great Carrying-place in the beginning of July, 1801; and having reported to the partners (there assembled) of the said company the result of his labor, it was deemed necessary to re-examine that country. That the late honorable William McGillivray, with the undersigned, and eight experienced men, in a canoe, set off to explore a route from Kamanistiquia (by the Dog river) to Lac La Croix, which they accomplished; but the route appeared so dangerous and laborious for loaded canoes that they would have explored other rivers had the season permitted. That in the year 1802 the undersigned explored another river in the said new route, which, from its continuous rapids, was found impracticable for loaded canoes, and the present new route was then determined on, as that by which, in future, they would carry on the fur trade, as being a country in which the United States had no claim.

That the whole of the routes the undersigned explored, in all appearance, had never been practised, except by the few natives of those coun-

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tries, and a trading canoe that occasionally supplied the wants of the natives, and wintered at the Dog lake or adjacent places. That, in the year 1802, the said company began clearing the forests at Kamanistiquia for the erection of buildings, &c. ; and that large parties of men, for several years, were employed in making carrying-places through the forests, some of them over deep swamps and morasses, over which causeways were laid of logs, squared on one side ; and that on the Portage Savanne the causeway is more than two miles in length. That they found some of the rivers and brooks quite obstructed with fallen trees, &c., which had to be partially cleared before they could be navigated by loaded canoes, all which brought a very heavy expense on the said company. That it was with difficulty, by making presents to some, and allowing extra wages to others, that the men engaged in the fur trade could be prevailed on to transport the goods, furs, &c., by the new route. That in the year 1802 the undersigned, from very good authority, received information that the United States troops had actually landed at Michilimackinac, the American garrison, for the purpose of proceeding to the depot of the fur trade, at the Great Carrying-place, and there enforcing the duties contemplated to be levied on the merchandise, furs, &c., of the said Northwest Company, as British subjects, had they not learned the said company were then beginning to evacuate the said depot, situated at the east end of the said Great Carrying-place.

Thus, the undersigned considers the new route from Kamanistiquia to be more dangerous, of greater length, and requires more labor, than the old route by the Great Carrying-place, &c.

WILLIAM MACKAY.

Sworn before me, at Montreal, this 12th day of June, 1827,
SAMUEL GALE, J. P.

I certify the above to be an exact and true copy of the original document, with which I have compared it.

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

J.

The undersigned, Jean Baptiste Pomainville, now of the city of Montreal, in the Province of Lower Canada, doth hereby certify : That in the year 1796, he, the undersigned, in the capacity of clerk, entered the service of the Northwest Company of Merchants, engaged in the fur trade of lake Superior, and of the countries east, north, and west, of the said lake. That, in the year 1801, the undersigned, in his capacity as clerk to the said company, was placed under the orders of Colonel William Mackay, (then one of the partners of the said Northwest Company,) with eight men and one native, in a canoe, to explore a route from the Rainy lake to the mouth of the Dog river, in lake Superior, called Kamanistiquia. That they did explore a route from thence to the place called Kamanistiquia. That they found the whole country a perfect wilderness, and it was with great difficulty and hard labor they reached Kamanistiquia. That when they had to make carrying-places, to avoid

dangerous rapids, falls, &c., or to open a communication with brooks, ponds, and lakes, &c., which had no other known communication, these carrying-places were made through pathless forests, until they came to the Weet-e-go Este-quan lake, near Lac des Mille Isles, and that a great part of the route explored by the undersigned and party was found to be impracticable as a commercial route. That the undersigned was a clerk in the service of the Northwest Company several years before and after the depot for the fur trade was transferred from the Great Carrying-place, a few miles west of the mouth of Pigeon river, in lake Superior, to Kamanistiquia; and believes the said transfer of the depot to have been made on account of duties threatened to be levied on the goods imported to and the furs exported from the said depot at the Great Carrying-place, by the officers of the United States.

That the whole country through which the undersigned passed appeared to him to have never been a commercial route, and practised only by the few natives of that country and an occasional trading canoe, to supply the wants of the said natives; which trading canoe wintered at some place from the Dog lake to Lac des Mille Isles; and the carrying-places over which this said canoe passed were narrow foot-paths, which had, with great labor, to be widened for the regular trading canoes. That the undersigned was well acquainted with both routes, and considers the new route as of greater length, more dangerous, and requiring greater labor, than the old route by way of the Great Carrying-place.

J. B. POMAINVILLE.

Sworn before me, at Montreal, this 12th day of June, 1827.

SAMUEL GALE, *J. P.*

I certify that I have compared the above with the original document, and that it is an exact and true copy.

RICHARD WILLIAMS,

A. Sec. 6th and 7th articles treaty of Ghent.

K.

The undersigned doth hereby certify that he was a partner of the Northwest Company, under the firm of McTavish, McGillivray, and Company, for the fur trade of lake Superior, and the countries east, north, and west, of the said lake. That the great depot of the fur trade was at the Great Carrying-place, a few miles west of the sortie of the Pigeon river. That from a strong belief, founded on the assertion of the United States officers and others, that the above depot was within the limits of the United States, and that heavy duties would be levied on all merchandise, stores, &c., imported thereto, and on the furs exported therefrom, by the officers of the United States, which would have been ruinous to the said firm, they were obliged to examine the countries northward and eastward, for another route to the interior countries. That the northeast side of the Pigeon river was examined by Sir Alexander Mackenzie, who pronounced it impracticable for commerce. That, in the year 1801, the said company ordered one of the partners (Colonel William Mackay) and Mr. Pomainville, a clerk, with men and natives in a canoe, to ex-

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plore a route from Lac La Croix to Kamanistiquia, on lake Superior, which was effected with much difficulty, the whole country being a perfect wilderness. That in the year 1802 this route was again examined, and the road marked out by which the fur trade in future was to be carried on. That, at a very great expense, they had to clear a thick forest, to erect buildings, &c., and to employ for several years large parties of men, to open roads through the forests, to avoid dangerous rapids, falls, &c., in the rivers, as carrying-places for their goods, furs, &c., and to communicate with brooks, ponds, and lakes, which had no other communication known; and that much of the roads was over deep swamp and morass, and to cross these, causeways of logs, squared on the surface, were laid, in one place of more than two miles in length. That some of the rivers and brooks were so much obstructed by fallen trees, &c., that they had to be partially cleared before they could be navigated by canoes. That the undersigned, in the year 1803, had the personal superintendence of the parties of men working in making roads through the forests, clearing the rivers and brooks of obstruction, &c., and the number of men so employed that year was about forty, besides occasional parties of men; and that, to all appearance, this route had never been practised, except by the few natives whose hunting-grounds are on this route. That it was with difficulty, and by allowing extra wages, that the men employed in the fur trade could be prevailed on to undertake the transport of goods, furs, &c., by this new route. The undersigned was several years in the fur trade, both before and after the depot for the fur trade was transferred from the Great Carrying-place to Kamanistiquia, and was well acquainted with both routes. That the new route is more dangerous, is of greater length, and requires more labor, than the old route by the Great Carrying-place, Pigeon river, &c., to Lac La Croix.

H. MACGILLIS.

Sworn before me, at Glengarry, E. D. Upper Canada, this 8th day of June, 1827.

AMB. BLACKLOCK,
J. P., E. D. Upper Canada.

I certify that I have compared the above with the original document, and that it is an exact and true copy.

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

L.

The undersigned doth hereby certify that he was a partner of the Northwest Company, under the firm of McTavish, McGillivray, & Company, for the fur trade of lake Superior, and the countries east, north, and west, of the said lake. That the great depot of the fur trade was at the Great Carrying-place, a few miles west of the sortie of the Pigeon river. That from a strong belief, founded on the assertions of the United States officers and others, that the above depot was within the limits of the United States, and that heavy duties would be levied on all merchandise, stores, &c., imported thereto, and on the furs exported therefrom, by the officers of the United States, which would have been ruinous to the said firm, they were obliged



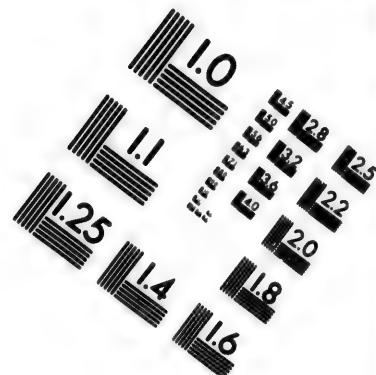
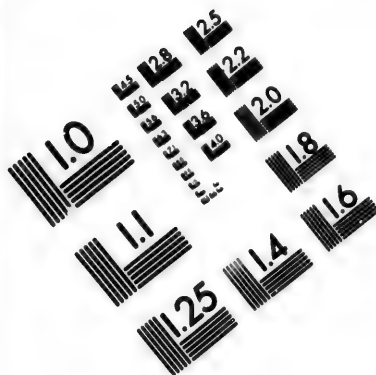
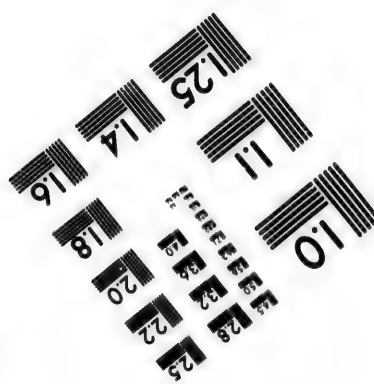
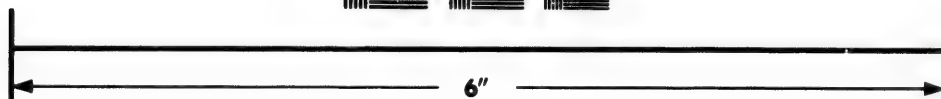
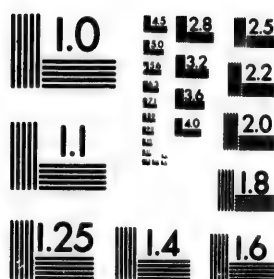


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WERSTER, N.Y. 14580
(716) 872-4503

to examine the countries northward and eastward, for another route to the interior countries. That the northeast side of the Pigeon river was examined by Sir Alexander Mackenzie, who pronounced it impracticable for commerce. That in the year 1801 the said company ordered one of the partners, (Colonel William Mackay,) and Mr. Pomainville, a clerk, with men and natives, in a canoe, to explore a route from Lac La Croix to Kamanistiquia, or lake Superior, which was effected with much difficulty, the whole country being a perfect wilderness. That in the year 1802 this route was again examined, and the road marked out by which the fur trade in future was to be carried on. That, at a very great expense, they had to clear a thick forest, to erect buildings, &c., and to employ, for several years, large parties of men to open roads through the forests, as carrying-places for their goods and furs, to avoid dangerous rapids, falls, &c., in the river, and to communicate with brooks, ponds, and lakes, which had no other communication; and that much of the roads made was over deep swamp and morass, and to cross these, causeways of logs, squared on the surface, were laid, in one place of more than two miles in length. That some of the brooks and rivers were so much obstructed with fallen trees, &c., that they had to be partially cleared before they could be navigated by canoes; and that, to all appearance, this route had never been practised, except by the few natives whose hunting-grounds are on this route. That it was with difficulty, and by allowing extra wages, that the men employed in the fur trade could be prevailed on to undertake the transport of goods, furs, &c., by the new route.

The undersigned was several years in the fur trade, both before and after the depot for the fur trade was transferred from the Great Carrying-place to Kamanistiquia, and was well acquainted with both routes. The new route is more dangerous, is of greater length, and requires more labor, than the old route by the Great Carrying-place and Pigeon river, to Lac La Croix.

D. CAMERON.

Sworn before me, at Glengarry, E. D. Upper Canada, this 7th day of June, 1827.

AMB. BLACKLOCK,
J. P., E. D. Upper Canada.

I certify that I have compared the above with the original document, and that it is an exact and true copy.

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

M.

PROVINCE OF UPPER CANADA, EASTERN DISTRICT.

John McGillivray, of Glengarry, in the said district, gentleman, being duly sworn, deposeth and saith: That he was a partner of the *ci-devant* Northwest Company, furnished with capital and goods by the firm of McTavish, Frobisher, & Co., and McTavish, McGillivray, & Co., of Mon-

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Croix to Kam-
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CAMERON.

this 7th day of

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ntleman, being
of the *ci-devant*
the firm of Mc-
& Co., of Mon-

tre al, for the purpose of carrying on the fur trade of lake Superior and the countries east, north, and west, of the said lake. That the great depot of the association then composing the Northwest Company was at the Great Carrying-place, on the border of lake Superior, a few miles west of the mouth of the Pigeon river. That from a strong belief, founded upon the assertions of the United States commanding officer, then stationed at Mackinac, and, indeed, others, that the said depot was within the limits of the United States of America, and that it was the decided intention of the Government of that country to appoint and establish a military post there, in order that they might levy duties on all merchandise, stores, &c. &c., imported thereinto, and also on the furs exported therefrom, consonant with the laws and regulations of their own state, after mature and deliberate consideration, it was then unanimously agreed to by the association composing the Northwest Company, that the trade could not afford the heavy impost with which it most inevitably would have been burdened, and that it would ultimately prove ruinous to the concern at large. These cogent reasons, at that time, induced the Northwest Company to look out for some other route or communication to the interior countries for the purpose of carrying on their trade; they were, therefore, obliged to examine the countries northward and eastward of the Grand Carrying-place; and the late Sir Alexander Mackenzie examined the northeast side of the Pigeon river, but pronounced it impracticable. In the year 1802 the said company ordered one of their partners (Col. William Mackay) and one of their clerks (Mr. Pomainville) to explore the route from Lac La Croix to Kamanistiquia, on lake Superior; which was effected with much difficulty and expense, as the whole country was a perfect wilderness. In the year 1802 this new route was again examined, and the road marked out then as the one by which in future the fur trade was to be carried on. That, at a very great expense, the concern had to clear away thick woods, to erect many buildings, &c., and for several years to employ large parties of men to open roads through the forests or carrying-places, to avoid many dangerous rapids and falls in the rivers, and to communicate with brooks, ponds, lakes, &c., which had no other communication. That much of the roads made in this new established route was over deep swamps and morasses, and to cross these, causeways of logs, squared on the surface, were made, in one place more than two miles in length. That many of the rivers and brooks were so much obstructed with fallen trees that they had to be partially cleared before they could be navigated by canoes. To all appearances, this route had never been practised, except by the natives whose hunting-grounds are in the vicinity thereof. It was with some difficulty, and by allowing extra wages, that the servants of the company employed in carrying on the fur trade could be prevailed upon to undertake the transport of the goods, furs, &c. &c., by this new route. The deponent was several years in the fur trade, both before and after that depot (or headquarters) was transferred from the Grand Carrying-place to Kamanistiquia, (or Fort William,) and was very well acquainted with both routes. The new route is more dangerous, is of greater length, and requires an infinite deal more labor, especially in years of low water, than the old route by the Grand Portage or the Great Carrying-place, Pigeon river, &c., to Lac La Croix.

JOHN MCGILLIVRAY.

Sworn before me, at Glengarry, E. D. Upper Canada, this 7th day of June, 1827.

AMB. BLACKLOCK,
J. P., E. D. Upper Canada.

I certify that the above is an exact and true copy of the original document, with which I have compared it.

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

S.

St. George's island, near the falls of St. Marie's, contains—

Total area in square miles	-	-	-	-	37.4432
British area in square miles	-	-	-	20.8202	
American area in square miles	-	-	-	16.6230	
Difference in square miles	-	-	-	<u>4.1972</u>	
Total area in square acres	-	-	-	-	23,964
British area in square acres	-	-	-	13,325	
American area in square acres	-	-	-	10,639	
Difference in square acres	-	-	-	<u>2,686</u>	

DAVID THOMPSON.

OCTOBER 21, 1826.

A true copy :

RICHARD WILLIAMS,
A. Sec. 6th and 7th articles treaty of Ghent.

N.

this 7th day of

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972

- 23,964

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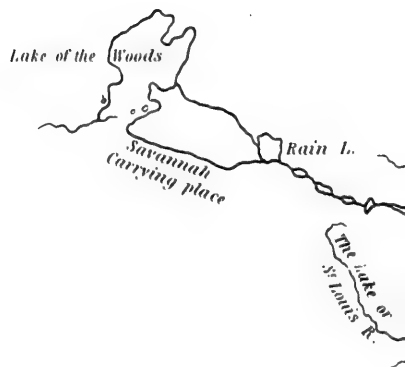
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y of Ghent.

From Charlevoix's Travels



A New Map of
NORTH AMERICA
from the latest discoveries
1763.



*I hereby Certify this to be a true Copy so far as it
extends of the above titled Map.
June 26 1827.*

David Thompson

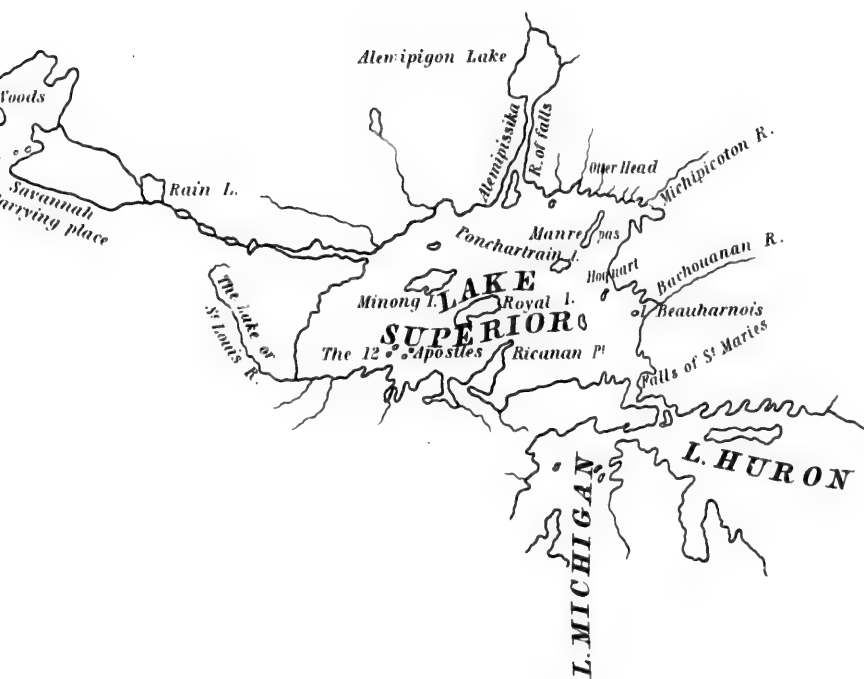
*Asst. C. Surv^r to the Board of
Commission under the 6. C. 7
Art^l of the Treaty of Ghent.*

A New Map of
ORTH AMERICA

From Charlevoix's Travels

the latest discoveries

1763.



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NORTH AMERICA

From the French of M.D. Anville

improved

with the Surveys made since the Peace



London Printed for Rob^t Sayer & J. Bennett Map & Print sellers 53 Fleet
1775

True Copy from the Original

(signed) George W. Whistler

Draftsman & Ass^t Surveyor

*I hereby certify this to be a true Copy of the Copy of the
above titled Map, now on the File of the Assistant Secre-
-tary to the Board of Commission, under the 6.C.7
Articles to the Treaty of Ghent*

David Thompson

*Ass^t C. Surv^r to the Board of Commission under
the 6. C. 7 Ar^s of the Treaty of Ghent.*

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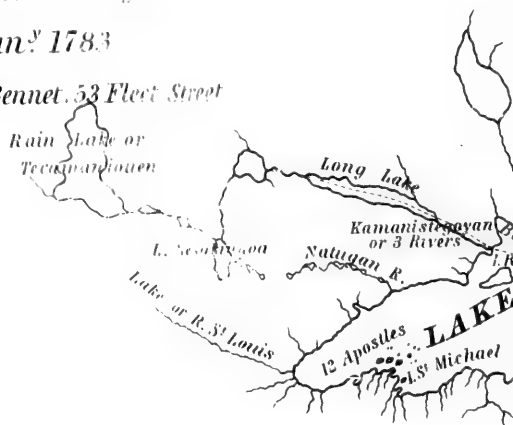
THE UNITED STATES OF AMERICA

*with the British Possessions of
Canada Novascotia New Brunswick & New Foundland
divided with the French
also the Spanish Territories of
Louisiana and Florida*

*according to the Preliminary Articles of Peace signed
at Versailles the 20th of Jan^y 1783*

London, Published for R. Sayer and J Bennet, 53 Fleet Street

1783.



True Copy from the Original

(Signed) George W. Whistler

Draftsman & Ass^t Surveyor

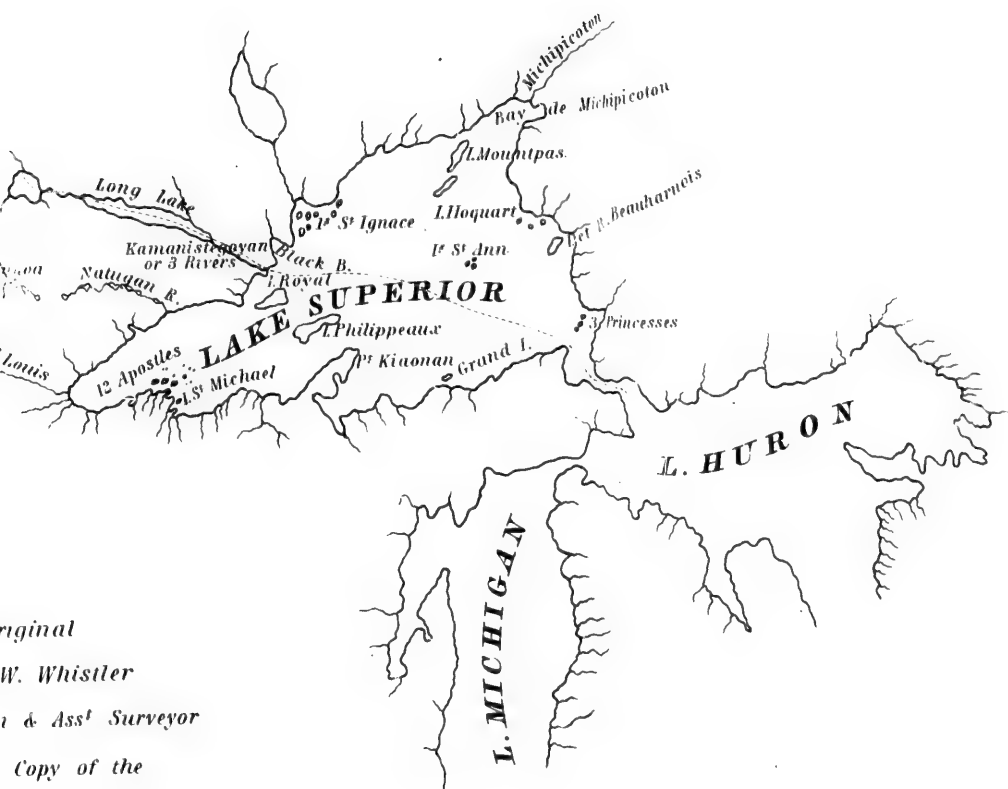
*I hereby Certify this to be a true Copy of the
Copy of the above titled Map now on the File
of the Assistant Secretary to the Board of
Commissioners under the 6. C. 7 Articles of the Treaty of*

David Thompson

Ass^t C Surv^r to the Board of Commⁿ

6. C. 7 Articles of the Treaty of Ghent.

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Original

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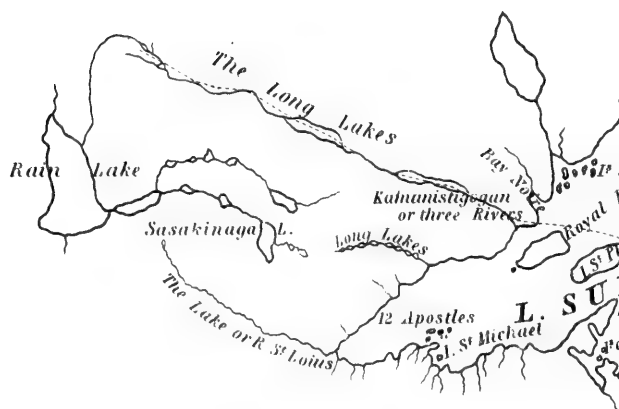
Laid down from the best Authorities agreed

Peace of 1783.

Published April 3^d 1783. by the Proprietor John

at his Map Warehouse Ludgate Street

London.



True Copy from the Original

(Signed) George W. Whistler

Draftsman & Ass^t Surveyor

*I hereby Certify this to be a true Copy of the Copy of the above
titled Map now on the File of the Assistant Secretary to the
Board of Commission under the 6.C.7 Articles of the
Treaty of Ghent.*

David Thompson

*Ass^t C Surveyor to the Board of
Commission under the 6.C.7*

Art^t of the Treaty of Ghent.

STATES OF AMERICA

est Authorities agreeable to the
peace of 1783.

1783, by the Proprietor John Wallis

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THE UNITED STATES OF AMERICA

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London, Published by Laurie & Whittle, 53 Fleet Street.

1794.



True Copy from the Original

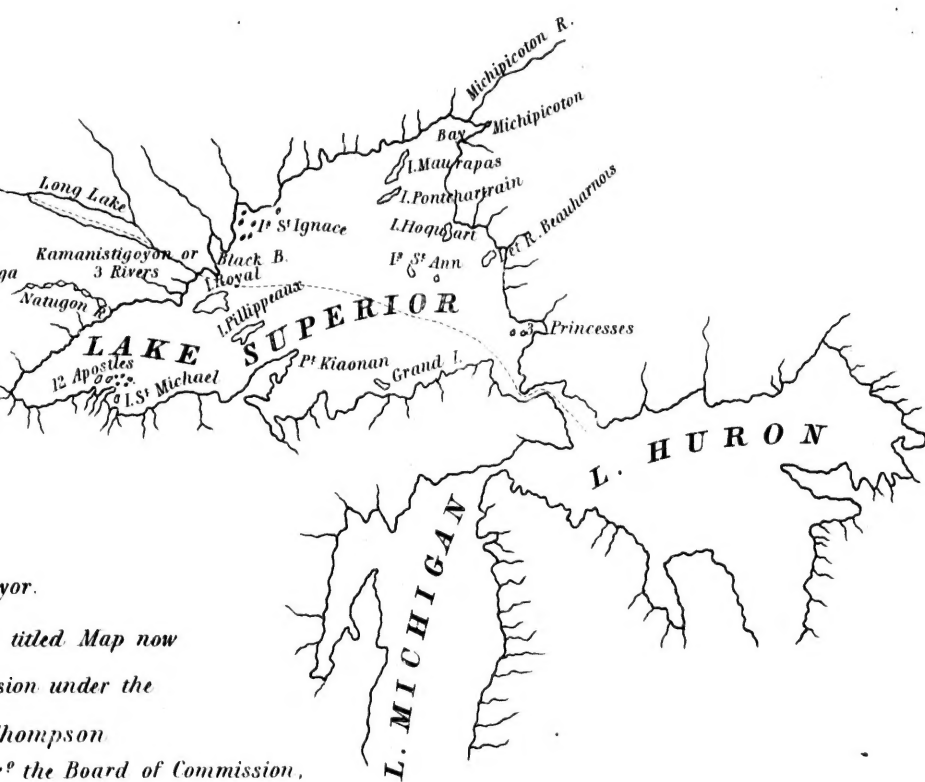
(Signed) George W. Whistler

Draftsman & Ass^t Surveyor.

*I hereby Certify this to be a true Copy, of the Copy of the above titled Map now
on the file of the Assistant Secretary, to the Board of Commission under the
6.C.7 Article of the Treaty of Ghent.*

*David Thompson
Ass^t C Surv^r the Board of Commission
under the 6.C.7. Article of the Treaty
of Ghent.*

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Thompson

° the Board of Commission.

6.C.7. Article of the Treaty